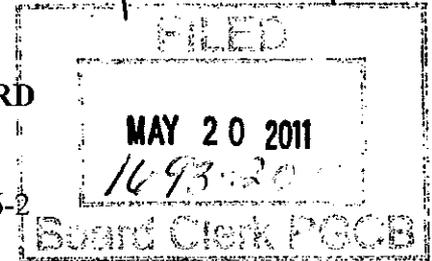


COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA GAMING CONTROL BOARD

In Re: Application of Woodlands Fayette, LLC :
Category 3 Slot Machine License : Docket No. 1366-2



ORDER

And now, this 20th day of May, 2011, the Pennsylvania Gaming Control Board (“Board”), having approved a Category 3 slot machine license for Woodlands Fayette, LLC (“Woodlands”), pursuant to 4 Pa.C.S. § 1305 and based on its review of Woodland’s application, the applications of its principal individuals and entities and the report of the Bureau of Licensing and the Bureau of Investigations and Enforcement relating thereto, it is hereby ORDERED that:

1. Pursuant to 4 Pa.C.S. § 1311.1, the individuals identified in paragraph 2 as principals of Woodlands satisfy the requirements to be licensed as part of the Woodlands’ Category 3 slot machine license.
2. Pursuant to 4 Pa.C.S. § 1311.1, the following principals of Woodlands submitted applications for licensure in conjunction with Woodlands’ application, along with required application fees:
 - **Nemacolin Woodlands, Inc.**, 100% Owner of Woodlands Fayette, LLC
 - **2001 Irrevocable Trust for Margaret H. Magerko**, 100% Owner of Nemacolin Woodlands, Inc.
 - **Margaret Ann Magerko**, President of Woodlands, Sole Trustee and Beneficiary for the 2001 Irrevocable Trust for Margaret H. Magerko
 - **Peter J. Magerko**, Vice President of Woodlands
 - **Cheri Lee Bomar**, Secretary and Corporate Counsel for Woodlands
 - **Joseph Alexander Hardy, III**, Grantor of the 2001 Irrevocable Trust for Margaret H. Magerko
3. After evaluating the suitability of the individuals and/or entities, the list of principals identified in paragraph 2 have proven that they are of good character, honesty and

integrity and are otherwise eligible and suitable to be issued licenses in conjunction with Woodlands.

4. The principal licenses issued pursuant to this Order are subject to all conditions, restrictions and requirements of the Pennsylvania Race Horse Development and Gaming Act as amended and all regulations of the Pennsylvania Gaming Control Board. The licenses are subject to renewal every three years and are nontransferable.
5. The Board has authority and retains the right to revoke, suspend, condition or deny issuance or renewal of any principal license for any violation of the Act as amended or regulations.
6. Pursuant to 4 Pa.C.S. § 1202(a), the Board has jurisdiction over every aspect of the authorization, operation and play of slot machines and table games in this Commonwealth.
7. IT IS ORDERED that the Board issues licenses to the principals identified in paragraph 2 subject to continuing compliance with the Act as amended and the regulations promulgated thereunder, including notice and filing requirements.

IT IS FURTHER ORDERED THAT, the Board shall issue Woodlands a Category 3 slot machine license, subject to satisfaction of the following conditions:

1. The payment of the \$5,000,000 slot machine licensing fee, which must be paid by the later of two months from the date of this Order or ten business days following the conclusion of any appeals to the award of this license.
2. The agreement to the Category 3 Slot Operator Statement of Conditions, as evidenced by the signing of the agreement by Woodlands' executive officer or designee within ten business days of the receipt of the Statement of Conditions from the Board.

3. Woodlands' provides formal notice to the Board as required by 4 Pa.C.S. § 1301.

IT IS FURTHER ORDERED that the Board delegates the authority to issue principal, key employee, gaming and non-gaming employee licenses, permits and registrations for Woodlands to the Director of Licensing provided the Bureau of Investigations and Enforcement and the Bureau of Licensing have no objections to the issuance and provided the Director of Licensing presents lists of the issued principal, key employee, gaming and non-gaming licenses, permits and registrations to the Board for approval at future Board meetings.

BY THE BOARD:



Gregory C. Fajt
Chairman

**COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD**

IN RE:	:	
	:	
APPLICATION BUSHKILL GROUP, INC	:	DOCKET NO. 19404
	:	
APPLICATION OF MASON-DIXON RESORT, L.P.	:	DOCKET NO. 46549
	:	
APPLICATION OF PENN HARRIS GAMING, L.P.	:	DOCKET NO. 46551
	:	
APPLICATION OF WOODLANDS FAYETTE, LLC	:	DOCKET NO. 1366
	:	
Applications for Category 3 Slot Machine Licenses	:	
	:	

ADJUDICATION

This matter is before the Pennsylvania Gaming Control Board (“PGCB” or “Board”) pursuant to applications filed by **Bushkill Group, Inc. (“Bushkill”), Mason-Dixon Resort, L.P. (“Mason-Dixon”), Penn Harris Gaming, L.P. (“Penn Harris”), and Woodlands Fayette, LLC (“Woodlands”)** for a Category 3 slot machine license in accordance with the Pennsylvania Race Horse Development and Gaming Act (“Act”), 4 Pa.C.S. §§ 1101-1904, *as amended* by Act 1 of 2010 of the General Assembly of Pennsylvania.¹

¹ Board Member Kenneth I. Trujillo does not concur in the final decision of the qualified majority of his fellow Board Members in this Adjudication and has filed a Dissent being issued contemporaneously herewith. As a result, references made herein to actions taken, conclusions drawn, or holdings reached by “the Board” refer only to the six (6) member qualified majority that voted in favor of granting the available Category 3 slot machine license to Woodlands Fayette, LLC.

In July 2004, upon the ratification of the Act, Pennsylvania embarked on an expansive initiative providing for legalized slot machine gaming at a limited number of licensed facilities in the Commonwealth. The primary expressed objective of the Act is to protect the public through regulating and policing of all activities involving gaming. Other objectives include enhancing live horse racing and breeding programs; increasing entertainment and employment opportunities in the Commonwealth; establishing a significant source of income to the Commonwealth in the form of tax relief; the creation of broad economic opportunities to Pennsylvania's citizens; and developing tourism. In meeting these objectives, the PGCB is charged with strictly monitoring the licensing of specified locations, persons, associations, practices, and activities while considering the public interest of the citizens of the Commonwealth and the social effects of gaming when rendering decisions. Ultimately, the Board must maintain the integrity of the regulatory oversight of the industry. 4 Pa.C.S. §1102.

The Act established the Board, which is comprised of three (3) gubernatorial and four (4) legislative appointee members. 4 Pa.C.S. §1201(b). The Board is vested with general jurisdiction over all gaming and related activities including, but not limited to, overseeing the acquisition and operation of slot machines and issuing, approving, renewing, revoking, suspending, conditioning, and denying slot machine licenses. 4 Pa.C.S. §1202.

Three categories of slot machine licenses are authorized under the Act: Category 1 licenses, permitting up to seven (7) qualifying licensed horse and harness racetracks to maintain slot machine facilities; Category 2 licenses, permitting up to five (5) stand-alone

slot machine locations in metropolitan or other tourism areas; and Category 3 licenses, permitting up to three (3) resort hotel slot machine facilities.² 4 Pa.C.S. §§1301-1307.

The Act sets forth essential eligibility criteria for each Category of license that applicants must satisfy before the Board considers an application on its merits. With respect to a Category 3 license, the subject of this Adjudication, Section 1305 of the Act provides the specific eligibility criteria, including that the applicant seeks to locate a Category 3 licensed facility in a well-established resort hotel with substantial year-round recreational guest amenities with no fewer than two hundred seventy-five (275) guest rooms under common ownership. 4 Pa.C.S. §1305(a)(1). The applicant for a Category 3 license must be the owner or the wholly owned subsidiary of the owner of the established resort hotel. *Id.* A Category 3 license may only be granted upon the express condition that an individual may not enter the gaming area of the licensed facility if the individual is not a registered overnight guest of the established resort hotel; a patron of one or more of the facility's amenities; or the holder of a Board-approved membership allowing the individual access to one of the hotel's amenities. 4 Pa.C.S. §1305(a)(1). The Act also imposes location criteria, providing that no Category 3 licensed facility shall be located within fifteen (15) linear miles of another licensed facility. 4 Pa.C.S. §1305(b)(1).

Per the Board's regulations, to qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer a complement of amenities characteristic of a well-established resort hotel, including but not limited to the following:

² At present, there are only two (2) Category 3 slot machine licenses. A third license may become available on or after July 17, 2017. Act 1 of 2010, § 21.

- (1) Sports and recreational activities and facilities such as a golf course or golf driving range;
- (2) Tennis courts;
- (3) Swimming pools or a water park;
- (4) A health spa;
- (5) Meeting and banquet facilities;
- (6) Entertainment facilities;
- (7) Restaurant facilities;
- (8) Downhill or cross-country skiing facilities;
- (9) Bowling lanes; and
- (10) Movie theaters. 58 Pa.Code § 441a.23.

The Act also imposes more general eligibility criteria on applicants for all categories of slot machine licenses, which include the development and implementation of a diversity plan to assure equal opportunity in employment and contracting, as well as a requirement that the applicant be found suitable, consistent with the laws of the Commonwealth, and otherwise qualified for licensure. 4 Pa.C.S. §1325. Other sections of the Act impose further restrictions on who may be issued a license, including the imposition of good character, honesty and integrity requirements upon applicants, and requiring letters of reference from law enforcement and other casino jurisdictions where the applicant may be licensed, 4 Pa.C.S. §1310; imposing business restrictions on who may own, control or hold key positions for the applicant, 4 Pa.C.S. §1311; requiring divestiture of interests of non-qualifying persons, 4 Pa.C.S. §1312; and imposing strict

financial fitness requirements on the applicants to assure the financial and operational viability of the proposal, 4 Pa.C.S. §1313, among others.

In addition to the eligibility criteria, the Act provides extensive guidance for the Board's consideration in issuing licenses. Section 1325(c)³ - Additional requirements, provides:

In addition to the eligibility requirements otherwise provided in this part, the board may also take into account the following factors when considering an application for a slot machine license:

(1) The location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area.

(2) The potential for new job creation and economic development which will result from granting a license to an applicant.

(3) The applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility.

(4) The applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant.

(5) The applicant's good faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly.

(6) The history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant.

(7) The degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular.

³ The Section 1325(c) factors are factors which the Board may take into consideration in determining whether the grant of a license is in the public interest and in accordance with the objectives of the Act.

(8) The record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations.

(9) The degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated.

(10) The record of the applicant and its developer regarding compliance with:

(i) Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and

(ii) State and local labor relations and employment laws.

(11) The applicant's record in dealing with its employees and their representatives at other locations.

As discussed *supra*, the applicants currently before the Board for the one (1) available Category 3 slot machine license are Bushkill, Mason-Dixon, Penn Harris, and Woodlands. The Board's authority to issue this license arises from Section 1305 of the Act. Because the Act only permits one (1) Category 3 license to be awarded to a well-established resort hotel at this time, there is competition among the applicants for the available license. 4 Pa.C.S. § 21(2).⁴ Because of this competitive factor, the four (4) applicants not only have the responsibility of satisfying the Board that they are eligible and suitable for a Category 3 license, but they are also required to convince the Board that their respective project should be chosen to best serve the Commonwealth, the public interest, and the intent of the Act. Ultimately, the General Assembly has left the final determination in this matter to the sound exercise of the Board's discretionary authority.

On March 8, 2011, the Pennsylvania Supreme Court upheld the Board's previous decision to grant a Category 3 slot machine license to Valley Forge Convention Center

⁴ The Board previously awarded the other available Category 3 slot machine license to Valley Forge Convention Center Partners, LP on April 8, 2009.

Partners, LP (“Valley Forge”) to operate a Category 3 licensed facility at the Valley Forge Convention Center. In upholding the Board’s decision, the Court held, among other things, that 1) Valley Forge is the equitable owner of the Valley Forge Convention Center property; 2) equitable ownership satisfies the Act’s ownership requirement; and 3) the Board properly determined that Valley Forge offers amenities that are typical of a well-established resort hotel. *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Board*, J-81-2009.

With respect to the four (4) Category 3 applications currently pending, the Board and its respective Bureaus engaged in extensive review and investigation. The Board conducted a Public Input Hearing for each Category 3 applicant, held on August 30, 2010 (Penn Harris), August 31, 2010 and September 1, 2010 (Mason-Dixon), September 2, 2010 (Bushkill), and September 8, 2010 (Woodlands), during which each applicant made a presentation and various individuals, including members of the community, spoke either in favor of or in opposition to the proposed project. In addition, during the public comment period, the Board received a combined 35,523 written comments relating to the four (4) proposals from the public.⁵ The Board placed large amounts of information about the projects on its website,⁶ and conducted final Suitability Hearings on November 16, 2010 (Mason-Dixon and Bushkill) and November 17, 2010 (Woodlands and Penn Harris) for the Category 3 applicants.

In addition to the Act’s eligibility criteria under Sections 1305 and 1310-1313, other factors the Board took into consideration when reviewing these applications are

⁵ The overwhelming majority of the written comments received were in relation to Mason-Dixon’s application.

⁶ See <http://www.pgcb.state.pa.us/>

those defined in Section 1325 of the Act and Section 441a.23 of the Board's regulations as listed above. The Board fully considered these factors to arrive at a decision on licensure based upon all of the evidence in the record. In addition to weighing all of the evidence comprising the evidentiary record before it, the Board received briefs, heard oral argument supporting the applications, and had the opportunity to question the applicants at length about their proposals.⁷

Furthermore, throughout the entire licensing and investigative process, the Board reached out to various federal, state and local law enforcement agencies, including the FBI and the Pennsylvania State Police, requesting any information in the possession of those agencies related to the suitability of the applicants in an attempt to assure that the Board had obtained all information relevant to each applicant's suitability for licensure. The Board has not received any information that would preclude the applicants from being considered for licensure based upon issues of suitability.

Based upon each Board member's comprehensive evaluation of all information obtained throughout the entire licensing and investigative process and contained in the evidentiary record before it, the Board collectively engaged in some quasi-judicial deliberations in executive session; however, it did not make a final decision until April 14, 2011, when the Board met during an open, public meeting in accordance with the requirements of the Commonwealth's Sunshine Act, 65 Pa.C.S. Chapter 7, and Section 1206 of the Act, for the purpose of voting.

⁷ Board Commissioners Moscato and McCall had not yet been appointed to the PGCB when the final Suitability Hearings were held. However, as stated on the record during the Board's April 14, 2011 public meeting, Commissioners Moscato and McCall had ample opportunity to review the evidentiary record before the Board in this matter.

During its April 14, 2011 public meeting, the Board voted, 6-1, to approve **Woodlands Fayette, LLC** for a Category 3 license, pursuant to terms and conditions to be imposed by the Board's Bureau of Licensing ("BOL"). The lone dissenting vote belonged to Commissioner Trujillo, a gubernatorial appointee. Therefore, under the Act, Woodlands received enough votes to constitute a qualified majority of the Board. As a result, the remaining three (3) applicants for a Category 3 license, Bushkill, Mason-Dixon, and Penn Harris were denied licensure due to the availability of only one (1) Category 3 license.

The following Findings of Fact and Conclusions of Law set forth the Board's rationale for these determinations.

FINDINGS OF FACT

General Findings Applicable to All Category 3 Applicants

1. All four (4) applicants have applied for a Category 3 slot machine license to operate a licensed gaming facility in a well-established resort hotel.
2. The initial applications of the Category 3 applicants were received by the Board on June 28, 2007 (Bushkill), January 12, 2010 (Woodlands), March 26, 2010 (Mason-Dixon), and April 7, 2010 (Penn Harris).
3. Upon receipt of the Category 3 applications, BOL put each application through a detailed completeness review. This process involved scrutinizing each and every question asked and each answer provided to determine if the answers and documentation were fully responsive. Where deficiencies were identified, requests for

more information were made of the applicant. As the new information arrived, it was again put through the same completeness review process.

4. All applications were deemed to be complete by BOL.

5. Once BOL was sufficiently satisfied with the core contents of each application, the applications were forwarded to the Bureau of Investigations and Enforcement (“BIE”) for character and financial suitability investigations.

6. This gathering of information and documentation was ongoing throughout the months prior to each applicant’s suitability hearing and continued until the final Board vote.

7. It remained each applicant’s obligation to update the information it provided throughout the application process as changes thereto arose.

8. BIE reviewed and inspected each application to identify any inconsistencies and to develop a general familiarity with each applicant’s overall business activity, financial situation, and history. BIE then developed an investigative plan utilized to conduct the background investigations of each applicant.

9. BIE requested information from numerous organizations and agencies. Criminal history checks were requested through the Pennsylvania State Police (“PSP”), which included queries of the Federal Bureau of Investigation’s (“FBI”) National Crime Information Center (“NCIC”) databases for criminal history and wanted person information. Further queries into criminal history records were conducted by BIE utilizing accessible databases and through direct contact and/or correspondence with local law enforcement agencies having jurisdiction over the current and former locations of the

businesses associated with each applicant and residences of the natural persons included in or related to the applications.

10. The Pennsylvania Office of Attorney General, Executive Offices of the PSP, several United States Attorney Offices, and FBI Offices were contacted with respect to each applicant in order to ascertain whether any concerns existed regarding their licensure.

11. Responses were not received from the Pennsylvania Office of Attorney General and the PSP.

12. In addition to the required Pennsylvania state tax clearance review conducted by the Department of Revenue and the Department of Labor and Industry, requests for tax clearance reviews were sent to other applicable federal, state and local jurisdictions. Additional verifications were made as well, including passports being verified through the United States Department of State and bank accounts, loans, lines of credit, and safe deposit box ownership being verified with financial institutions.

13. BIE also conducted database searches to identify and verify the employment, family, residence and educational histories of each applicant, as well as their non-gaming and professional license status, civil litigation dockets, and credit histories. The results and findings of these database checks were then compared against each other and to the information contained in the application materials.

14. Where applicable, contact was made with other gaming regulators concerning the applicants and the natural persons associated with the applicants in order to verify gaming licensure and licensure status.

15. Extensive personal interviews were conducted by BIE agents with each applicant and its natural person principles, during which investigators gathered extensive amounts of information concerning these entities, individuals, their businesses, and personal histories.

16. Investigation of each applicant's finances, in order to assess financial suitability, was conducted by the Financial Investigations Unit ("FIU") of BIE. The role of FIU was to verify data and create a financial fitness report.

17. FIU developed a process for the determination of financial suitability of the applicant. The process entailed extensive document review.

18. FIU established the following criteria in order to determine Financial Suitability for the applicant, with Criteria 1 being the applicant's financial track record, examining past financial performance and financial risk profile; Criteria 2 being an Individual Analysis; and Criteria 3 being the financial wherewithal of the applicant, including project funding and the applicant's ability to grow and maintain revenue.

19. FIU did not prepare revenue projections for each individual applicant. Rather, FIU evaluated the projections provided by each applicant as a part of its application.

20. FIU collected extensive information from each applicant, including corporate information for the applicant, other related entities, and individual information, where applicable.

21. Based on the process designed and the information collected, FIU prepared the Financial Suitability Report for each applicant with supporting

documentation, consisting of: 1) Corporate Financial Analysis; 2) Corporate Structure Analysis; and 3) Project Financial Overview.

22. As a part of its application, each applicant submitted a traffic study prepared by a professional firm retained by the applicant for the purpose of analyzing traffic issues associated with the proposed project and proposing traffic and roadway modifications to alleviate traffic problems associated with increases in traffic which the proposed casino would create.

23. The Board engaged the engineering and planning firm of McCormick Taylor to review traffic study plans submitted by each Category 3 applicant and to provide a responsive, independent report concerning the traffic studies and proposed mitigation measures and modifications to address increased traffic concerns.

24. The Board conducted a Public Input Hearing for each Category 3 applicant. The hearings were held on August 30, 2010 at the Hampden Township Municipal Building in Mechanicsburg, Pennsylvania (Penn Harris), August 31, 2010 and September 1, 2010 at the Comfort Suites in Cumberland Township, Pennsylvania (Mason-Dixon), September 2, 2010 at the Country Club of the Poconos in East Stroudsburg, Pennsylvania (Bushkill), and September 8, 2010 at the Wharton Township Municipal Building in Farmington, Pennsylvania ("Woodlands").

25. Numerous representatives from all four (4) applicants testified at the Public Input Hearings on behalf of their respective proposals.

26. All interested groups and individuals wishing to speak at the Public Input Hearings concerning the four (4) proposals were given the opportunity to provide testimony.

27. The Board also provided a written public comment period for each applicant, ending on October 29, 2010 (Penn Harris), November 1, 2010 (Mason-Dixon), November 1, 2010 (Bushkill), and November 8, 2010 (“Woodlands”).

28. At the end of the written public comment period, the Board had received a total of approximately 35,523 written comments.

29. The Board’s regulations at 58 Pa. Code §441a.7(z) provide a mechanism for persons wishing to intervene in any licensing hearing for a slot machine license, provided that person has an interest in the proceeding which is substantial, direct, and immediate and if that interest is not adequately represented by another party to the underlying matter.

30. The following Petitions to Intervene were filed in the Category 3 licensing process: Mountainview Thoroughbred Racing Association (“Mountainview”) filed a Petition to Intervene in the matter of Penn Harris’ Category 3 Application, which was granted by the Board; and Washington Trotting Association, Inc. (“WTA”) filed a Petition to Intervene in the matter of Woodlands’ Category 3 Application, which was also granted by the Board.

31. No other Petitions to Intervene were filed with respect to any other Category 3 applicant.

32. Each Category 3 applicant filed a Notice of Intent to Compare with respect to the other competing applicants.

33. Sands Bethworks Gaming, LLC (“Sands”) and Downs Racing, L.P. (“Downs Racing”) each filed a Notice of Intent to Contest Eligibility and Suitability with respect to Bushkill. Mountainview filed a Notice of Intent to Contest Eligibility with

respect to Penn Harris. WTA filed a Notice of Intent to Contest Eligibility and Suitability with respect to Woodlands.

34. On November 16 and November 17, 2010 all four (4) Category 3 applicants were provided final Suitability Hearings, during which they were permitted to present witnesses to provide sworn testimony, documentary evidence, and demonstrative evidence. During said hearings, each applicant attempted to convince the Board that it deserved to be awarded the one (1) available Category 3 license.

35. PGCB Regulation 441a.7 provided the procedural framework for the final Suitability Hearings conducted for all applicants.

36. Pursuant to PGCB regulation 441a.7, applicants were provided the opportunity to also present evidence during their own hearing concerning their competitors in order to demonstrate that their own project should be selected rather than the project of a competing applicant. All applicants who desired to present comparative evidence were required to notify the other applicants of that intent and provide notice of the evidence to be presented in order to permit all applicants the opportunity to respond to any comparative evidence.

37. Each applicant was provided the opportunity to provide a written brief to the Board by November 29, 2010, after the completion of the suitability hearings for all four (4) Category 3 applicants.

38. The Board received briefs from all four (4) of the applicants. Additionally, Sands and Downs Racing filed Post Hearing Briefs in Support of their Notices to Contest Eligibility and Suitability with regard to Bushkill. WTA filed a Post Hearing Brief with regard to Woodlands. Mountainview filed a Post Hearing Brief with

regard to Penn Harris. Finally, Mason-Dixon filed a letter in direct response to several questions posited by the Board.

39. No applicant filed any written objection to the Board's docket, or raised any objection, whether orally or in writing, to the Board during the course of its hearing, relating to the procedure utilized by the Board for the conduct of the hearing process generally or to any particular allegation of error.

40. On December 6, 2010, Mason-Dixon attempted to submit a Supplemental Letter and exhibits, advising the Board of certain facts pertaining to the financial suitability of Isle of Capri Casinos, Inc. ("IOC"), the proposed gaming facility operator selected by Woodlands.

41. On December 7, 2010, Linda Lloyd (who also received a copy of Mason-Dixon's aforementioned letter), Director of the Board's Office of Hearings and Appeals, informed Mason-Dixon that its letter would not be accepted by the Board, as it was received after the November 29, 2010 deadline for filing post-hearing submissions in the underlying matter of the awarding of the one (1) available Category 3 slot machine license.

42. The Office of Chief Counsel referred Mason-Dixon's letter to FIU for analysis.

43. Thereafter, on December 8, 2010, Mason-Dixon filed a Petition to Reopen the Record Pursuant to 58 Pa.Code § 494a.6 to Respond to Material Facts that Arose After the Record Closed and After Post-Hearing Briefs Were Filed. Specifically, Mason-Dixon wished to reopen the record to introduce information it claimed was material to the

Board's evaluation of IOC and that was not available before the November 29, 2010 filing deadline.

44. The information contained within Mason-Dixon's above-referenced Petition was materially the same as that contained in its letter of December 6, 2010.

45. On January 6, 2011, the Board denied Mason-Dixon's Petition to Reopen the Record Pursuant to 58 Pa.Code § 494a.6 to Respond to Material Facts that Arose After the Record Closed and After Post-Hearing Briefs Were Filed.

46. The information Mason-Dixon wished to submit, however, was presented to the Board for review by way of an updated report from FIU.

47. The Act currently permits the Board to issue only one (1) Category 3 slot machine license.

48. On April 14, 2011, during a public meeting, the Board voted unanimously to approve and award Woodlands the available Category 3 slot machine license, thereby denying, by operation of law, the applications of Bushkill, Mason-Dixon, and Penn Harris.

BUSHKILL GROUP, INC. ("Bushkill")

49. Bushkill filed a Category 3 slot machine license application with the Board on June 28, 2007.

50. Bushkill has been investigated for financial fitness and nothing financially material has been found that would indicate either the applicant or its principals are not financially stable or suitable at this time.

51. Bushkill has posted a letter of credit in the amount of \$5 million to demonstrate its financial ability to pay the Category 3 slot machine license fee as required by 4 Pa.C.S. § 1305(d).

52. Based upon the latest representations by Bushkill and careful investigation by FIU, the Board is satisfied that Bushkill is likely to maintain a financially successful, viable, and efficient business operation which will maintain a steady level and growth of revenue.

53. Bushkill proposes operating a Category 3 facility at the Fernwood Hotel & Resort ("Fernwood") in Middle Smithfield Township, Monroe County, Pennsylvania.

54. Fernwood is 15.58 linear miles from Mount Airy Casino & Resort when measured from casino door to casino door; 43.08 linear miles from Mohegan Sun at Pocono Downs; and 36.7 linear miles from Sands Casino Resort.

55. Bushkill is 100% owner of HaRa Corporation, which owns and operates Fernwood; the land on which the casino would be built; as well as HRP Cooperation and Tree Tops, Inc., which operate timeshares on the Fernwood property.

56. Fernwood consists of a 440-acre parcel of land, approximately 90 miles from New York City and 110 miles from Philadelphia, which includes the Fernwood Hotel, the Event Center (in which Bushkill intends to operate its licensed facility), and the Villas at Tree Tops and Fairway, which contain both deeded and right-to-use timeshare units.

57. Fernwood, which opened in 1921, currently offers 212 traditional hotel rooms and 576 fully furnished one (1) to four (4) bedroom villas (resulting in total villa

room count of 694 and overall room count of 906), as well as numerous year-round recreational guest amenities.

58. Bushkill can accommodate up to 4,500 guests at any given time.

59. Fernwood would never make available for rent fewer than 275 guest rooms. In order to achieve this, 63 time shares will be set aside for rent by members of the public at all times.

60. In 2006 and 2007, Fernwood underwent significant renovations. The exterior and interiors of the Villas were upgraded. Public spaces in the hotel were renovated and wireless internet access was also implemented in hotel meetings rooms. A new lobby and restaurants were constructed and much of the guest room furniture was replaced. The total capital expenditure for these improvements was over \$2 million.

61. At its Suitability Hearing, Bushkill's CEO, Andy Worthington, testified that Bushkill plans to construct 292 additional hotel rooms.

62. Amenities at Fernwood include: a snow-tubing park; horseback riding; an 18-hole, par 71 golf course; a 2,000-seat Event Center; a 10,000-square foot interactive play center featuring video games and a prize redemption center; two (2) gift shops; fitness center; sauna; eight (8) indoor and outdoor pools; canoeing and rafting; paddle/bumper boats; paintball; massage; miniature golf; tennis; and basketball.

63. Bushkill proposes converting and expanding the 24,000 square foot Event Center into a 50,000 square foot casino facility that will house a 500 slot machine casino. After petitioning for a table game operation certificate, Bushkill intends to include sixteen (16) banking table games and six (6) poker tables in its gaming facility.

64. Bushkill's anticipates that the Event Center will be comprised of 18,053 square foot gaming area, 13,750 square feet of which will house 500 slot machines; 2,240 square feet of which will be dedicated to the table pit area; and 2,063 of which will be for a poker room.

65. Bushkill also proposes having a 114-seat food court and a 15-seat bar in its gaming facility.

66. The Event Center is connected to the main hotel facility and is adjacent to the lobby area of the resort complex.

67. Bushkill plans on adding 294 new parking spaces in a new parking lot as well as 57 spaces to an existing parking lot to account for the anticipated increase in patrons that would occur if the Board were to grant its application.

68. Bushkill anticipates the creation of roughly 912 new direct and indirect permanent jobs as a result of the casino including 360 direct jobs and 552 indirect jobs (plus 180 on-site construction jobs).

69. Bushkill is committed to hiring a substantial amount of new employees from the local employment market.

70. Delvest Corporation ("Delvest"), a wholly-owned subsidiary of Penn National Gaming, Inc. ("Penn National"), will provide the funding for Bushkill's proposed project.

71. Specifically, Delvest will provide Bushkill a loan in an amount up to \$55.2 million.

72. Bushkill proposes utilizing PA Gaming Ventures, LLC (“PGV”), a wholly-owned subsidiary of Penn National, as its management company for its proposed project.

73. Bushkill also proposes utilizing PGV to develop its proposed project.

74. If the Board grants Bushkill’s application, PGV will be required to be licensed as a management company and Delvest will be required to be licensed as a Principal thereof; both entities and their respective Principals have filed the required applications with the Board.

75. Bushkill has identified the following individuals as being integral to the operation of its proposed project:

- a. W. Andrew Worthington, President and Chief Executive Officer of Bushkill. Mr. Worthington has several years of prior experience in the real estate/timeshare business.
- b. Kevin Lavelle, Chief Financial Officer of Bushkill. Mr. Lavelle has been employed with Bushkill for 22 years.
- c. Mark Turner, Chief Operating Officer of Bushkill. Mr. Turner has 30 years experience in the hotel and leisure resort industry.
- d. Thomas V. Casale, General Counsel for Bushkill. Mr. Casale has been with Bushkill since 1998.
- e. Gina Bertucci, Vice President of Marketing for Bushkill. Ms. Bertucci has been with Bushkill since 1999.

f. Josh Herschlag, Vice President of Vacation Ownership Marketing at Bushkill. Mr. Herschlag has 28 years experience in the timeshare industry in the Pocono region.

g. Bruce Hagedorn, Director and 10% shareholder in Resorts Group, Inc. Mr. Hagedorn has 30 years experience in the resort industry.

76. Bushkill also identified several members of Penn National's management team who have a combined 100+ years of gaming experience that would contribute to its proposed project, including Steve Snyder, Senior Vice-President of Corporate Development; Carl Sottosanti, Vice-President and Deputy General Counsel; as well as Thomas Auriemma, Vice President and Chief Compliance Officer, among others.

77. In support of its application, Bushkill stated that it has donated more than \$300,000 in cash and in-kind contributions annually to over 35 non-profit causes in the region, including: Mountain Laurel Center for the Performing Arts; the Pocono Mountain Diversity Awareness Conference; Northampton County Community College; East Stroudsburg University; and Middle Smithfield Township.

78. Fernwood employees participate in more than 30 community service organizations on the state and county levels.

79. The Board conducted a Public Input Hearing on Bushkill's application on September 2, 2010 at the Country Club of the Poconos in East Stroudsburg, Pennsylvania.

80. One (1) Pennsylvania state legislator and four (4) local government representatives registered to speak at the Public Input Hearing. The legislator and three (3) of the local government representatives testified in support of Bushkill's proposed

project. Five (5) community groups testified at the Public Input Hearing in support of Bushkill's proposed project. Of the 18 individuals registered to speak at the Public Input Hearing, 15 testified and of those individuals, 13 testified in support of Bushkill's proposed project.

81. The Board conducted a Suitability Hearing on Bushkill's application on November 16, 2010 at the State Museum in Harrisburg, Pennsylvania.

82. At the Suitability Hearing, Bushkill presented several witnesses and introduced documentary evidence in support of its application.

83. Bushkill plans to limit access to its gaming floor to eligible patrons. Its proposed system would provide qualifying patrons a voucher for access to the casino which the patron would then present to security, along with age verification, at the lone entry point to the gaming floor.

84. Bushkill plans on issuing either a daily casino pass or a yearly casino pass to five (5) groups of patrons: (1) timeshare owners who pay annual dues; (2) customers who pay for seasonal golf or snowtubing passes; (3) Players Club Resort Card Holders (used for amenity access or overnight guests); (4) accommodation guests; and (5) patrons who meet the non-de minimis requirement in the Gaming Act.

85. In a stabilized year of operations, Bushkill estimates a patron level of 1.3 million persons that would generate \$107 million in revenue and a win per position of \$513.

86. Bushkill intends to increase its marketing budget from \$5 million annually to \$18 million and join its marketing efforts with Penn National if the Board were to grant Bushkill's application.

87. Bushkill currently employs a staff of over 500 employees. More than half of its staff is comprised of women. Over 73% of Bushkill's supervisory personnel are minorities or women.

88. Bushkill has a Diversity Plan in place which assures equality of opportunity in employment and contracting, diversity in groups providing goods and services to Bushkill, and a plan to recruit, train and update diversity in all employment classifications at its facility.

89. Bushkill submitted a Compulsive and Problem Gambling Plan as part of its application.

90. A casino at Fernwood is a permissible use of the resort property as it is currently zoned.

91. Resorts Group, Inc. is the 100% owner of Bushkill.

92. Resorts Group, Inc is owned by W. Andrew Worthington (23% direct ownership interest); Kevin P. Lavelle (17% direct ownership interest); Mark S. Turner (10% direct ownership interest); Gina J. Bertucci-Turner (10% direct ownership interest); Joshua M. Herschlag (10% direct ownership interest); Bruce Hagedorn (10% direct ownership interest); Harry B. VanSciver (10% direct ownership interest); and Thomas V. Casale (10% direct ownership interest).

93. Neither Bushkill nor any person affiliated with Bushkill is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board.

94. Neither Bushkill nor any affiliate, intermediary, subsidiary or holding company thereof has ever applied for or been issued a Category 1 or Category 2 slot machine license in Pennsylvania.

95. Neither Bushkill nor its affiliates, intermediaries, subsidiaries or holding companies hold any interest in a supplier or manufacturer's license.

96. Neither Bushkill nor any person affiliated with Bushkill has served as a public official or executive level public official during the one (1) year period prior to Bushkill filing its application.

97. BIE's investigation has not revealed any information that would indicate that Bushkill or any of its affiliates, directors, owners or principals is of unsuitable character.

98. Neither Bushkill nor any of its Principals has been convicted of a felony or gambling offense that would prohibit the Board from issuing a license.

99. The investigation of Bushkill and its principals has not revealed any information concerning bankruptcies, civil lawsuits, judgments, criminal convictions, past activities, business practices, business associates, dealings, or any other information concerning the honesty, integrity, family, habits, or reputation that would prohibit licensure of Bushkill or its principals.

100. No individuals have requested waivers of their obligation to be licensed.

101. Bushkill has satisfied all local, state and federal tax obligations.

102. Both Sands and Downs Racing presented testimony at the November 16, 2010 Suitability Hearing as well as filed Notices of Intent to Contest Eligibility and Suitability.

103. Representatives from Sands and Downs Racing testified to alleged over-saturation of gaming opportunities in the Northeastern Pennsylvania region and the

cannibalization of gaming revenues in that region they claim would occur if the Board were to grant Bushkill's application.

104. Sands argued that Bushkill would add the least overall new revenue to the Commonwealth due to the fact that it believes a large portion of its revenues would be derived from existing casinos in the Pocono Mountain region. Sands believes Bushkill will derive far more than 11% (Bushkill's estimate) of its revenue from existing facilities.

105. Downs Racing argued that two-thirds of its business is derived from patrons living within a 30-mile radius of its licensed facility, as convenience is an enormous factor patrons consider when choosing a facility to frequent. Based on current win-per-position figures of existing licensees, adding another licensed facility to the Pocono Mountain region will, according to Downs Racing, result in unacceptable revenue cannibalization in a region that is already adequately serviced by gaming opportunities.

106. Albert Federico of McCormick Taylor testified that he did not foresee any major traffic issue with Bushkill's proposed project but concluded that future updates to the main driveway of the Bushkill property would be warranted as patron levels increase.

107. Bushkill believes its casino can be operational within six (6) to 12 months.

108. Bushkill has not made any community-related promises contingent upon the award of a Category 3 license.

109. Bushkill has demonstrated compliance with Federal, State and local discrimination, wage and hour, disability, occupational, and environmental health and safety laws, as well as State and local labor relations and employment laws.

MASON-DIXON RESORT, L.P. (“Mason-Dixon”)

110. Mason-Dixon filed a Category 3 slot machine license application with the Board on March 26, 2010.

111. Mason-Dixon has been investigated for financial fitness and nothing financially material has been found that would indicate that the applicant or its principals are not financially stable or suitable at this time.

112. Mason-Dixon has posted a letter of credit in the amount of \$5 million to demonstrate its financial ability to pay the Category 3 slot machine license fee as required by 4 Pa.C.S. § 1305(d).

113. Based upon the latest representations by Mason-Dixon and careful investigation by FIU, the Board is satisfied that Mason-Dixon is likely to maintain a financially successful, viable and efficient business operation which will maintain a steady level and growth of revenue.

114. Mason-Dixon is a Pennsylvania limited partnership that was formed on November 23, 2009 for the purpose of applying for a Category 3 slot machine license.

115. Mason-Dixon proposes operating a Category 3 facility at the Eisenhower Hotel & Conference Center (“Eisenhower”) located in Cumberland Township in Adams County, Pennsylvania.

116. The nearest Board licensed gaming facility, Hollywood Casino at Penn National Race Course, is located 55 miles from the Eisenhower.

117. The Eisenhower does not abut Gettysburg National Park and Mason-Dixon has not expressed any plans or future intent to expand its facility any closer to the Park.

118. The Eisenhower consists of a 150-acre parcel of land situated two (2) miles north of the Maryland-Pennsylvania border, which includes the Eisenhower, the Allstar Events Complex, and the Devonshire Apartments.

119. The Eisenhower, which opened in 1973, currently offers 308 traditional hotel rooms and numerous guest amenities including: Richard's Restaurant & Lounge; an indoor tropical courtyard with a sky dome that houses an indoor swimming pool and Jacuzzi; outdoor pool; fitness center with dry saunas; ballroom; tennis courts; 27,983 square feet of convention/conference space; Allstar Events Complex (50,000 square feet expo center), containing a billiards room, virtual reality thrill ride, virtual reality Pebble Beach golf, arcade games and rides; soccer fields; 36-hole miniature golf; 14-acre fishing lake with paddle boats; go-kart tracks; walking and running trails; batting cages; basketball and volleyball courts; and an outdoor pavilion.

120. Mason-Dixon proposes renovating the 50,000 square foot Allstar Events Complex, retrofitting it with a "ski lodge" aesthetic that will house a 600 slot machine casino. After petitioning for a table games operations certificate, Mason-Dixon intends to include 35 banking table games and 15 poker tables in its licensed facility.

121. Mason-Dixon does not plan to relocate those amenities that are currently housed in the Allstar Events Complex.

122. Mason-Dixon's proposal anticipates that its licensed facility be comprised of 20,000 square feet back of the house area and a 50,000 square feet gaming floor.

123. Mason-Dixon also proposes to have a center lounge in the licensed facility that will contain a 175-seat food court; a 20-seat dessert lounge; a bar and entertainment

area; and a two-way fire place. The licensed facility will overlook the lake currently on the property.

124. Although Mason-Dixon's proposal includes plans to remove certain amenities (amenities located in the Allstar Events Complex which are youth oriented), it does not include plans to add any additional guest amenities.

125. Mason-Dixon's proposal also includes plans to renovate and upgrade the hotel to coordinate with the casino's ski-lodge aesthetic.

126. As a means to physically connect the hotel and the casino, which are currently situated 1,200 feet apart, Mason-Dixon plans on constructing a covered walkway between the structures for guest convenience. Also, Mason-Dixon intends to institute a shuttle service between the front of the hotel and the main valet service located adjacent to the casino.

127. Mason-Dixon asserts that its current 700 parking space lot adjacent to the Allstar Events Complex will be adequate to support additional guests.

128. Mason-Dixon estimates that it will realize a win-per-position of \$275 per day in a stabilized year of operation.

129. Currently, title to the Eisenhower lies with three entities: Timeless Towns of America, Inc.; Michael Investments, Inc.; and the Estate of Richard L. Michael, Sr. ("Title Holders").

130. The Title Holders have entered into an Option to Purchase Agreement ("Purchase Agreement") with Mason-Dixon for title to the Eisenhower which Mason-Dixon asserts renders it the equitable owner of the Eisenhower (and therefore eligible for Category 3 licensure).

131. Under the Purchase Agreement, Mason-Dixon “purchased” several six (6) month option periods.

132. The “drop dead” date for exercise of the Purchase Agreement is May 8, 2012.

133. By its terms, failure to close or terminate the Purchase Agreement by October 9, 2010 resulted in a termination fee imposed upon Mason-Dixon.

134. Delvest will provide the funding for Mason-Dixon’s proposed project.

135. Specifically, Delvest will provide Mason-Dixon a loan in an amount up to \$75 million.⁸

136. Mason-Dixon proposes utilizing PGV as its management company for its project.⁹

137. Mason-Dixon also proposes utilizing PGV to develop and operate its project, including the entirety of the Eisenhower (e.g. the hotel and the Devonshire Apartments).

138. If the Board grants Mason-Dixon’s application, PGV will be required to be licensed as a management company and Delvest will be required to be licensed as a Principal thereof; both entities and their respective Principals have filed the required applications with the Board.

139. If the Board grants Mason-Dixon’s application, PGV will not only operate the casino but also operate the Eisenhower.

⁸ As noted *supra*, Delvest had a similar financing arrangement with Bushkill.

⁹ Bushkill also proposes utilizing PGV as its management company.

140. In support of its showing of “business experience,” Mason-Dixon identified numerous members of Penn National’s management team who have a combined 100+ years gaming experience.

141. As part of its application, Mason-Dixon provided the following information in support of its record of meeting commitments to local agencies, community based organizations and employees in other locations: Joseph A. Lashinger, Jr. was involved in the development of Chester Downs and Marina, the licensee at Harrah’s Chester. Chester Downs and Marina acquired the old Sun Shipbuilding site and completed a previously abandoned environmental remediation of the nearly sixty-acre property. David M. LeVan is active in community and non-profit organizations and has made more than \$5 million in philanthropic donations to charitable and other non-profit organizations. Mr. LeVan was a founding board member of the Gettysburg Foundation, a nonprofit educational organization that partners with the National Park Service to enhance preservation of the Gettysburg National Battlefield. Mr. LeVan and his wife have donated an easement across 60 acres of their property near the battlefield to ensure that there is no future development on these lands and were instrumental in the restoration of Gettysburg’s Majestic Theater and Lincoln Train Station.

142. As part of its application, Mason-Dixon submitted information from a report it solicited from Econsult Corporation on the economic impact of Mason-Dixon’s proposed project.

143. Econsult estimated that Mason-Dixon’s proposed project would add 375 full-time jobs; 550 construction jobs; 326 indirect jobs attributable to Mason-Dixon’s operating expenditures; and 195 jobs attributable to ancillary spending. Econsult also

estimated that Mason-Dixon's proposed project would result in more than \$37 million in wages and employee earnings.

144. In February 2010, Mason-Dixon unveiled its "Hire Adams First!" program, under which Mason-Dixon pledges to work with local and state programs and use its own efforts to fill its employment opening with Adams County residents.

145. In March 2010, Mason-Dixon entered into an agreement with Gettysburg Tours to provide its guests access to tours of Gettysburg National Park.

146. In March 2010, Mason-Dixon unveiled its "Mason-Dixon Pass" program; a cross-marketing effort with other tourist attractions in the immediate area.

147. Mason-Dixon has entered into profit sharing agreements with Adams and Cumberland Counties, assuring those counties definitive shares of gaming revenue if the Board grants Mason-Dixon's application, regardless of actual gaming revenues generated.

148. The Board conducted a Public Input Hearing on Mason-Dixon's application on August 31, 2010 and September 1, 2010 at the Comfort Suites in Cumberland Township, Pennsylvania.

149. Two (2) Pennsylvania state legislators and five (5) local government representatives registered to speak at the Public Input Hearing. The two (2) legislators were neutral as to Mason-Dixon's proposed project; four (4) of the local government representatives testified in support of Mason-Dixon's proposed project; and one (1) local government representative was neutral as to Mason-Dixon's proposed project.

150. Twenty-seven (27) representatives of community groups testified regarding Mason-Dixon's proposed project at the Public Input Hearing; nine (9)

(testifying on behalf of 87 individuals) testified in support of the proposed project and 18 testified in opposition to the project.

151. Although 225 individuals registered to speak and appeared at the Public Input Hearing, 104 of these individuals (including the 87 aforementioned individuals) submitted affidavits in lieu of actual testimony and merged their comments. Ultimately, 121 total individuals testified.

152. Of the 121 individuals who testified at the Public Input Hearing, 31 persons (speaking on behalf of 104 individuals) spoke in support of Mason-Dixon's proposed project and 90 spoke in opposition to the proposed project.

153. The Board received 30,915 written comments regarding Mason-Dixon's proposed project.

154. Of those comments, 3,563 comments were in support of the project, while 27,352 comments were in opposition to the project.

155. The Board conducted a Suitability Hearing on Mason-Dixon's application on November 16, 2010 at the State Museum in Harrisburg, Pennsylvania.

156. At that Hearing, Mason-Dixon presented several witnesses and introduced documentary evidence in support of its application.

157. Peter Tyson, from PFK Consulting, estimated that, in a stabilized year, Mason-Dixon would realize \$83 million in gaming revenue, \$30 million of which would be derived from out-of-state consumers.

158. Terry Madonna ("Madonna"), of Terry Madonna Opinion Research, testified that, in his scientific research commissioned by Mason-Dixon, 60 to 70 percent of Commonwealth residents support legalized gaming. Furthermore, approximately 20 to

25 percent of residents have a moral objection to gambling and will oppose it wherever and whenever it may occur. In an analysis of Adams County, Madonna testified that 62% of residents support the Mason-Dixon project while 38% are opposed.

159. Representatives from Mason-Dixon testified that it intended to provide three (3) means of access to its gaming floor: (1) an access card granting hotel guests unfettered access to the casino; (2) a patron amenities card granting patrons of the amenities access to the casino for 72 hours; and (3) a membership card granting access to members for the duration of that membership.

160. Mason-Dixon representatives testified that the total estimated cost of its proposed project is \$75 million.

161. Federico of McCormick Taylor testified that the conclusions reached in Mason-Dixon's traffic study, while conservative, were accurate. Specifically, Federico agreed that Mason-Dixon may need to make improvements to the driveway on its property, construct turning lanes, install a traffic signal, and make improvements to the Route 15 ramps to compensate for the anticipated increase in traffic if the Board were to grant Mason-Dixon a Category 3 license.

162. Mason-Dixon is willing to contribute to improvements to Route 15 ramps as well as its own driveway in an attempt to mitigate any unacceptable increases in traffic that may occur as a result of operating a licensed facility at the Eisenhower.

163. If the Board grants Mason-Dixon's application for licensure, it anticipates its casino can be operational by December 31, 2011.

164. Contingent on its approval for a Category 3 slot machine operator license, Mason-Dixon has agreed to several promises and commitments with the local

community, including an agreement entered into on April 5, 2010 with Cumberland Township for annual funding; establishment of a scholarship fund; traffic improvements; reimbursement for certain township professional fees related to the casino project and provisions for providing certain easements.

165. Mason-Dixon also entered into an agreement on July 28, 2010 with Adams County to provide for annual funding and to make an annual donation to the Adams County Volunteer Emergency Services Association.

166. Mason-Dixon is owned by Mason-Dixon Resorts, GP, LLC (16% direct ownership interest); Joseph A. Lashinger, Jr. (60.8% direct ownership interest); David M. LeVan (15.2% direct ownership interest); the LeVan Family Partnership, LLC (4% direct ownership interest); Bernard A. Yannetti (1% direct ownership interest); Michael S. Jackson (1% direct ownership interest); the Hayden Elizabeth LeVan 2010 Trust (1% direct ownership interest); and the Trace Carter LeVan 2010 Trust (1% direct ownership interest).

167. Joseph A. Lashinger, Jr., limited partner of Mason-Dixon and manager of Mason-Dixon's general partner, Mason-Dixon Resorts GP, LLC, is a former Principal of Category 1 slot machine licensee Chester Downs and Marina, LLC. The Board licensed Mr. Lashinger as a Principal in 2006. On April 7, 2010, the Board approved the surrender of Mr. Lashinger's Principal license as the result of Mr. Lashinger's sale of his interest in Chester Downs and Marina, LLC to Harrah's Chester Downs Investment Company.

168. David M. LeVan, limited partner of Mason-Dixon, and his wife Jennifer S. LeVan (owner of 50% interest in the LeVan Family Partnership, LLC, limited partner

of Mason-Dixon), held an interest in an unsuccessful applicant for a Category 2 slot machine license, Crossroads Gaming Resorts & Spa, LP.

169. Mason-Dixon has a Diversity Plan in place which assures equality of opportunity in employment and contracting, diversity in groups providing goods and services to Mason-Dixon, and a plan to recruit, train and update diversity in all employment classifications at its facility.

170. Mason-Dixon submitted a Compulsive and Problem Gambling Plan as part of its application.

171. Mason-Dixon has demonstrated compliance with Federal, State and local discrimination, wage and hour, disability, occupational, and environmental health and safety laws, as well as State and local labor relations and employment laws.

172. Mason-Dixon has satisfied all local, state and federal tax obligations.

173. Neither Mason-Dixon nor any person affiliated with Mason-Dixon is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board.

174. Neither Mason-Dixon nor any affiliate, intermediary, subsidiary or holding company thereof has ever applied for or been issued a Category 1 or Category 2 slot machine license in Pennsylvania.

175. Neither Mason-Dixon nor its affiliates, intermediaries, subsidiaries or holding companies hold any interest in a supplier or manufacturer's license.

176. Neither Mason-Dixon nor any person affiliated with Mason-Dixon has served as a public official or executive level public official during the one (1) year period prior to Mason-Dixon filing its application.

177. BIE's investigation of Mason-Dixon, its principals and its affiliates, intermediaries, subsidiaries or holding companies did not reveal any information that would prohibit the Board from licensing said entities or individuals.

178. BIE's investigation has not revealed any information that would indicate that Mason-Dixon or any of its affiliates, directors, owners or principals is of unsuitable character.

179. No individuals have requested waivers of their obligation to be licensed. The investigation of Mason-Dixon and its principals has not revealed any information concerning bankruptcies, civil lawsuits, judgments, criminal convictions, past activities, business practices, business associates, dealings, or any other information concerning the honesty, integrity, family, habits, or reputation that would prohibit licensure of Mason-Dixon or its principals.

PENN HARRIS GAMING, L.P. ("Penn Harris")

180. Penn Harris submitted an application to the Pennsylvania Gaming Control Board for a Category 3 slot machine license on April 7, 2010.

181. Penn Harris has been investigated for financial fitness and nothing financially material has been found that would indicate that the applicant or its principals are not financially stable or financially suitable at this time.

182. Penn Harris has posted a letter of credit in the amount of \$5 million to demonstrate its financial ability to pay the Category 3 slot machine license fee as required by 4 Pa.C.S. § 1305(d).

183. Based upon the latest representations by Penn Harris and careful investigation by FIU, the Board is satisfied that Penn Harris is likely to maintain a financially successful, viable and efficient business operation which will maintain a steady level and growth of revenue.

184. On August 27, 2010, Mountainview Thoroughbred Racing Association (“Mountainview”) filed with the PGCB a Petition to Intervene in the Application of Penn Harris. In its Petition, Mountainview alleged that it would suffer substantial, direct, and immediate harm if the application of Penn Harris were to be granted.

185. Mountainview further alleged that Penn Harris is not eligible for licensure under the Act and the Board’s regulations. Mountainview’s allegations stem from its contention that Penn Harris does not have 275 guestrooms under common ownership and available for rental and it has insufficient year-round recreational guest amenities to qualify as a “well established resort”.

186. Mountainview claims that its interests are not adequately represented and argues that the granting of a license to Penn Harris would lead to the cannibalization of its market share.

187. On October 27, 2010, the Board granted Mountainview’s intervention and party status pursuant to 58 Pa.Code § 441a.7(z).

188. Penn Harris’ proposed Category 3 facility is located on a 22.5 acre site in Hampden Township, Cumberland County, Pennsylvania, approximately 6.8 miles from downtown Harrisburg, near the intersection of Route 581 and Carlisle Pike, a bustling local retail corridor.

189. Penn Harris’ proposed casino is to be named the West Shore Casino.

190. The property at which Penn Harris wishes to locate its Category 3 licensed facility was previously known as the Holiday Inn Harrisburg West.

191. Mechanicsburg GF owns the hotel and operated it under a franchise agreement with the Holiday Inn brand of hotels.

192. The Holiday Inn franchise agreement terminated as of December 31, 2010.

193. As of January 1, 2011, the hotel joined the Carlton Hotel Group and operates as a Park Inn franchisee.

194. The Park Inn property currently has 239 hotel rooms and 36 recreational vehicles.

195. 219 of the Park Inn's hotel rooms were originally marketed under the Holiday Inn brand, while 20 additional rooms are housed in a separate building and were not available for rent within the Holiday Inn reservation system. Penn Harris avers, however, that the rooms were nevertheless made available for rental to guests.

196. The means by which the 20 additional hotel rooms are currently made available for rent under the Park Inn brand is unknown.

197. The RVs are titled to Penn Harris.

198. Twelve of the 36 RVs have one television in them and some will feature such themes as "Lucy and Desi" and "touring rock star rooms" in the future.

199. The RVs are not currently connected to an electrical hookup, nor are they connected to water or sewer lines.

200. The RVs are self-contained and receive electricity from a generator.

201. Since the RV's were placed on the property on or about August 2, 2010, the Park Inn has rented the RVs for a total of 27 room nights as of the last time data on such rentals was made available to the Board at Penn Harris' Suitability Hearing.

202. The hotel was prohibited from marketing the RVs under its franchise agreement with Holiday Inn.

203. The Penn Harris amenities include two (2) bars/restaurants, a fitness center, an indoor swimming pool, an outdoor swimming pool, meeting/event facilities, miniature golf course, five (5) lighted sand volleyball courts, picnic grove, horseshoe pits, badminton, croquet courts, and a multi-purpose event field.

204. The Park Inn has a 14,000 square foot entertainment complex with indoor and outdoor decks, tiki bars, a restaurant, and a California fireplace.

205. The Park Inn hosts over 100 wedding receptions and ceremonies a year.

206. The Park Inn's customers currently have an average stay of 2.4 nights.

207. Leisure and individual group guests comprise 65% of the Park Inn's current business.

208. Penn Harris, through an Agreement of Limited Partnership, was formed on April 7, 2010 for the sole purpose of owning and operating a Category 3 license facility to be located at the Park Inn.

209. The General Partner is Penn Harris Gaming GP, LLC, which is made up of Mechanicsburg GF Investors, LP ("Mechanicsburg GF") (33.33%), Cambridge 3030 Gaming, LLC ("Cambridge") (33.33%), and CMS Wyo GP, LLC ("CMS") (33.33%). The Limited Partners of Penn Harris are CMS, Cambridge and Mechanicsburg GF.

210. On April 1, 2010, Hi Land Development, LLC, KNM Associates LP, and RKH Securities, Inc. (collectively the “outparcel owners,” or owners of adjacent parcels of land on which Penn Harris is situated), Mechanicsburg GF, and Penn Harris entered into a Contribution Agreement (Agreement).

211. Ken Kochenour is the 100% owner of the outparcel owners and Mechanicsburg GF.

212. Pursuant to the Agreement, Mechanicsburg GF will contribute the Park Inn and its 219 rooms, the 20 independent rooms and land to Penn Harris. Additionally, the outparcel owners will contribute two adjacent parcels of land to Penn Harris. In exchange, Mechanicsburg GF will receive a 20% partnership interest in Penn Harris. The outparcel owners will not receive any interest in Penn Harris. The outstanding interest of 80% is contributed to the remaining partners in exchange for their participation in the project and their expertise in gaming, finance, and development.

213. Initially, the Agreement contained a condition precedent, requiring Penn Harris to be issued a Category-3 license prior to the closure of the transaction.

214. On November 1, 2010, Penn Harris submitted a First Amendment to Contribution Agreement which removed the issuance of a Category 3 license as a condition precedent to the Agreement.

215. Pursuant to the Amendment to the Agreement, if closing did not occur by December 31, 2010, Penn Harris must pay a penalty to Mechanicsburg GF and the outparcel owners.

216. The following principals of Penn Harris have consented to and undergone required background checks: Penn Harris Gaming GP, LLC., CMS Wyo Partners, LP,

Mechanicsburg GF, Cambridge, CMS Wyo GP, LLC, Carlisle Investors, Inc., GF Development, Inc., RKH Securities, Inc., CMS Gaming GP, LLC, CMS Gaming Partners Q, L.P., CMS VRE II Partners, John M. Donnelly, Michael D. Sklar, Kenneth Kochenour, Richard T. Aljian, and William A. Landman.

217. The CMS Companies (“CMS”), a multi-faceted private equity investment firm, have acquired 34 full service hotels since 2000.

218. CMS currently has \$1.3 billion in assets under management in its real estate portfolio.

219. CMS has raised a dedicated \$60 million for its gaming fund for Penn Harris and Valley Forge.¹⁰

220. CMS intends to allocate approximately \$30 million to each of the Penn Harris and Valley Forge projects.

221. Mr. Kochenour is the CEO and founder of GF Management, Inc. (“GF Management”). GF Management is a 22 year old hospitality ownership and management company that specializes in hotels, catering facilities, golf courses, and other related hospitality assets. Since 1988 it has operated over 200 hotels in 27 states. Currently, GF Management operates 100 properties in 26 states and has in excess of 16,000 rooms under management.

222. Penn Harris has not hired a management company to run its casino.

223. Kerry Smith has been selected as the General Manager of the proposed West Shore Casino. Mr. Smith has been in the gaming industry for three decades. In 1997 he was hired as senior vice president of casino operations for Resorts International.

¹⁰ CMS has also taken an ownership interest role in the Category 3 facility to be located at the Valley Forge Convention Center.

224. Mr. Smith will oversee the on-site management staff which will consist of directors who run the various departments and manage daily operations.

225. Mr. Smith will not manage any other gaming operation. His management is specific to the West Shore Casino.

226. Penn Harris anticipates that it will operate 600 slot machines and 50 table games.

227. The proposal calls for a construction of a 30,000-40,000 square foot structure that will be incorporated into the existing hotel. The new structure will house an approximately 25,000 square foot gaming floor and additional dining options.

228. Investment in the new structure, including fit-out, is estimated at \$20 million. Additionally, the existing hotel will be refurbished, upgraded and re-themed to incorporate the casino.

229. There are 938 parking spots on-site at the Park Inn.

230. The total project development costs are estimated at \$75 million.

231. Penn Harris projects that it can open its casino in 9 to 12 months.

232. The construction of the casino and the hotel refurbishment will create 350 construction jobs.

233. The casino is expected to create 300 jobs with an average salary of \$40,000 per year with benefits.

234. Penn Harris plans to hire a significant portion of new employees via the local employment market and will conduct Job Fairs to meet this goal.

235. Penn Harris projects total gaming revenue in 2013 to be \$75,796,026. The total revenue figure is comprised of \$72,806,563 from amenity patrons and the day trip market and \$2,989,463 from overnight guests.

236. For 2013, Andrew Klebanow of Gaming Market Advisors testified that he projects Penn Harris will achieve a win per slot machine of \$277 and a win per table of \$831.

237. Penn Harris intends to market the casino and RV World to RV owners who are traveling through the area.

238. The RV World would contain 36 permanent and themed RV guest rooms and parking as well as room for an additional 15 patron-owned RVs that can be housed in the RV Park. Proposed RV World services include potable water, waste removal, fueling, site security, convenience shopping, rental facilities for entertainment needs, high amp electric hook-up, bathing and toilet facilities, high speed internet, and pet facilities.

239. Penn Harris has committed to establish a 501(c)(3) non-profit entity to which it will contribute an amount equal to 1% of its annual pre-tax income. The proceeds are to be used solely for philanthropic purposes for the benefit of the residents of Hampden Township.

240. Penn Harris has a Diversity Plan in place which assures equality of opportunity in employment and contracting, diversity in groups providing goods and services to Penn Harris, and a plan to recruit, train and update diversity in all employment classifications at its facility.

241. Penn Harris submitted a Compulsive and Problem Gaming Plan as part of its application.

242. Penn Harris plans to limit gaming area access to registered hotel guests and/or patrons of hotel amenities by developing a “greeting station” outside the slots gaming area. The patron’s receipts will be validated to ensure that the guest has satisfied the de minimis expense requirement. Once validated, the patron will receive an electronic device such as a wristband that will be programmed with an end time.

243. The Park Inn is more than 25 miles away from the nearest licensed facility, Hollywood Casino.

244. Penn-Harris retained Orth-Rodgers & Associates (“Orth-Rodgers”) to study the impact that the proposed facility will have on traffic and parking in the area.

245. Based upon its analysis of existing traffic conditions and its projections of future conditions with and without the licensed facility, Orth Rodgers concluded that the impact of casino traffic on the local area road network will be minimal.

246. The Orth-Rodgers study recommended the following traffic improvements: a right-turn declaration lane on the Carlisle Pike for the driveway; widen the driveway to provide sufficient exiting capacity, including a double left-turn lane; and modify the traffic signal operation at the intersection.

247. This traffic study was reviewed by McCormick Taylor engineer Al Frederico.

248. McCormick Taylor found that it would be unlikely that a PennDOT permit for the driveway improvements could be issued within nine (9) months, as Penn-Harris anticipates.

249. McCormick Taylor engineer Al Frederico testified that without the improvements to the Carlisle Pike and the driveway, the level of traffic congestion would be unacceptable.

250. The Board conducted a Public Input Hearing on Penn Harris's application on August 30, 2010 at the Hampden Township Municipal Building in Hampden Township, Cumberland County, Pennsylvania.

251. At the Public Input Hearing there were two (2) local Government representatives that spoke and were neutral on the proposed project. There were also two (2) community groups that offered testimony in opposition to the Penn Harris facility. The community groups were associated with the United Methodist Advocacy and First United Methodist Church and opposed the casino on the basis that it would negatively impact the community and lead to gambling addiction and crime. Finally, there were 12 individuals who attended the hearing to present their position on the casino. Two (2) of the individuals waived their right to speak, one (1) person was neutral on the project and nine (9) spoke in opposition to the casino. Some of the reasons cited for opposing the casino were the potential increase in traffic on the Carlisle Pike, increased crime, lower property values, and proximity to residential areas.

252. The Board received 1,749 written comments regarding Penn Harris' proposed project.

253. Of those comments, 34% supported the project, 65% opposed the project, and less than 1% were neutral.

254. BIE's investigation has not revealed any information that would indicate that Penn Harris or any of its affiliates, directors, owners or principals is of unsuitable character.

255. The investigation of Penn Harris and its principals has not revealed any information concerning bankruptcies, civil lawsuits, judgments, criminal convictions, past activities, business practices, business associates, dealings, or any other information concerning the honesty, integrity, family, habits, or reputation that would prohibit licensure of Penn Harris or its principals.

256. No individuals have requested waivers of their obligation to be licensed.

257. Neither Penn Harris nor any person affiliated with Penn Harris is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board.

258. Neither Penn Harris nor any affiliate, intermediary or holding company thereof has ever applied for or been issued a Category 1 or Category 2 slot machine license in Pennsylvania.

259. Neither Penn Harris nor its affiliates, intermediaries or holding companies hold any interest in a supplier or manufacturer license.

260. Neither Penn Harris nor any person affiliated with Penn Harris have served as a public official or executive level public official during the one year period prior to the filing of Penn Harris' Category 3 application.

261. Penn Harris has satisfied all local, state and federal tax obligations.

262. Penn Harris has demonstrated compliance with Federal, State and local discrimination, wage and hour, disability, occupational, and environmental health and safety laws, as well as State and local labor relations and employment laws.

263. Neither Penn Harris nor any of its Principals has been convicted of a felony or gambling offense that would prohibit the Board from issuing a license.

WOODLANDS FAYETTE, LLC (“Woodlands”)

264. Woodlands submitted an application to the Pennsylvania Gaming Control Board for a Category 3 slot machine license on January 12, 2010.

265. On October 1, 2010, WTA filed with the Board a Petition to Intervene in the Application of Woodlands, alleging that, if the Board were to grant Woodlands’ application for a Category 3 slot machine license, WTA would suffer direct, substantial, and immediate harm due to cannibalization of its revenue.

266. In addition, WTA asserts that Woodlands is not eligible for a Category 3 license because the actual gaming facility is not proposed to be located *in* a resort hotel; rather the gaming facility would be located in a smaller, existing structure on the resort grounds, but approximately 1.2 miles away from its primary resort hotel complex.

267. On October 27, 2010, the Board approved WTA’s intervention and granted WTA party status pursuant to 58 Pa.Code § 441a.7(z).

268. Woodlands has been investigated for financial fitness and nothing financially material has been found that would indicate that the applicant or its principals are not financially stable or suitable at this time.

269. Woodlands has posted a letter of credit or bond in the amount of \$5 million to demonstrate its financial ability to pay the Category 3 slot machine license fee as required by 4 Pa.C.S. § 1305(d).

270. Based upon the latest representations by Woodlands and careful investigation by FIU, the Board is satisfied that Woodlands is likely to maintain a financially successful, viable, and efficient business operation which will maintain a steady level and growth of revenue.

271. Woodlands' Category 3 facility is planned to be located within the grounds of the Nemaocolin Woodlands Resort ("Nemaocolin"). Nemaocolin sits on nearly 2,000 acres of land in Wharton Township, Fayette County, Pennsylvania near the intersection of Route 40 and Route 381 and is comprised of numerous building structures, including lodging, entertainment, and dining facilities.

272. There are a total of 322 guest rooms at Nemaocolin. The Chateau Lafayette has 124 guest rooms; the Lodge has ninety-seven (97) guest rooms; Falling Rock has forty-two (42) guest rooms; there are fifty-four (54) townhouse units; and five (5) luxury homes that are available for rent. The townhouses and luxury homes are not timeshares; rather, they are treated as hotel rooms that are available for rent to the general public.

273. The Chateau Lafayette is modeled after the "classic hotels" of Europe. The Lodge is the original hotel at Nemaocolin and is modeled after classic English countryside inns. Falling Rock is the newest addition to the resort and The Nemaocolin Woodlands townhouses and luxury homes are typically rented for groups or families.

274. All the guest rooms are under the common ownership of Nemaocolin Woodlands, Inc., Woodlands' parent company, and were open to the public at the time Woodlands filed its application on January 12, 2010.

275. Each lodging opportunity is situated at a different location on the resort property.

276. Nemaquin features two (2) 18-hole golf courses and has partnered with Nike to offer a Golf Academy.

277. The Woodlands Spa is a 32,000 square foot facility that features 29 treatment rooms, a heated indoor pool, whirlpool tubs, steam room, dry saunas, full service salon, hydrotherapy tubs, and a 2,400 square foot fitness center.

278. There are three (3) fine dining restaurants at Nemaquin: the Lautrec; Aqueos; and Autumn. The Lautrec is a AAA Five Diamond Award and Forbes Travel Guide Five Star Award winner. Aqueos is a AAA Four Diamond Award recipient.

279. There are multiple casual dining outlets such as: the Tavern; P.J.'s Ice Cream and Pizza Parlor; the Hungry Moose Café at the Sundial Lodge; Orville's Pub and Grill at the Shooting Academy; the Caddy Shack; the Gazebo; and the Halfway House on Mystic Rock. There are also several lounges and bars located at Nemaquin, including a cigar bar.

280. Nemaquin has an Adventure Center that includes all terrain vehicles, paintball, mountain biking, climbing wall, ropes course, zip line, archery, disc golf, miniature golf, volleyball, and tennis. There is also a Shooting Academy featuring shooting stations and flush fields. Fly fishing guides and instructors are available and, in the winter, skiing, snowboarding, snow tubing, cross-country skiing, snowshoeing, and dog sledding are available. An equestrian center features horse back riding and sleigh rides.

281. Nemaquin opened the Nemaquin Woodlands Pet Resort and Spa, which features individually themed kennels, climate controlled accommodations, an indoor training pool, full grooming services, and full veterinarian services.

282. There are multiple swimming pools, both indoor and outdoor, museums, and a private airstrip located on Nemacolin grounds.

283. There are multiple retail offerings at Nemacolin, including 14 shops at the 55,000 square foot shopping arcade. There are also other stores located throughout Nemacolin such as Hardy & Hayes Jewelry, the Cigar Shoppe, the Sundry Shop, the Boutique in Woodlands Spa, the Pool Boutique, and the Signature Shop in the Chateau.

284. The Wildside facility hosts the Nemacolin Race Zone, eight (8) lanes of bowling, an indoor climbing wall, over 65 arcade games, and pool tables.

285. Nemacolin also contains wildlife habitats for lions, white buffalo, tigers, camels, bears, elk, and zebras.

286. Nemacolin offers cultural programs focusing on art, food, and wine. Nemacolin houses an art collection valued at more than \$45 million, which is on display in a museum on the grounds. Nemacolin has one of the largest wine cellars in the Commonwealth of Pennsylvania, holding more than 10,000 bottles of wine.

287. Nemacolin currently contains over 31,000 square feet of meeting and banquet facilities.

288. Approximately 50% of Woodlands' revenue is attributed to corporate events.

289. Nemacolin currently hosts 350,000 guests annually. 60% of the guests are from outside of Pennsylvania, with top markets being Washington, D.C., Maryland, Virginia, and Ohio.

290. Woodlands plans to use IOC as its management company. IOC has submitted the appropriate application for its entities and its principals. The proposed project at Nemaocolin is to be an IOC brand: the Lady Luck Casino.

291. The land on which Nemaocolin sits was purchased at a bankruptcy auction in 1987 by Joseph Hardy. His daughter, Margaret H. Magerko, has been operating Nemaocolin since 1989.

292. Woodlands was formed on September 30, 2005 for the purpose of applying for a Category 3 slot machine license.

293. Woodlands is a wholly-owned subsidiary of Nemaocolin Woodlands, Inc., which owns and operates Nemaocolin. Nemaocolin Woodlands, Inc. is wholly owned by a private trust, the 2001 Irrevocable Trust for Margaret H. Magerko. Ms. Magerko is the sole trustee and beneficiary of the Trust.

294. The 2001 Irrevocable Trust for Margaret H. Magerko also owns 52% of 84 Lumber.

295. The proposed facility is planned to be located within the Wildside facility. It has 48,000 square feet of space and is located on the eastern part of the property, next to Route 40. The amenities currently located at Wildside will be moved to other locations at Nemaocolin.

296. Woodlands' project has only one (1) phase of construction and no temporary casino is contemplated. The Wildside facility will be expanded to 63,455 square feet, of which 22,270 square feet will be designated as gaming floor space. Woodlands anticipates that 600 slot machines and twenty-eight (28) table games will be

available at the time of opening. Woodlands projects that it can open the facility within nine (9) months of a favorable Board decision.

297. The projected cost of the renovation and expansion is \$50 million. Pursuant to the proposed management agreement between IOC and Woodlands, IOC will finance the entire project from current cash flow and a revolving credit facility.

298. Woodlands estimates that, in a stabilized year of operations, it will realize a win per position of \$244.

299. A Public Input Hearing was held on September 8, 2010 in Wharton Township, Fayette County during which Woodlands made a public presentation to the Board concerning its application. Representatives from Woodlands and Isle of Capri Casinos, Inc. ("IOC") spoke and answered questions. All interested groups and individuals wishing to speak at the meeting were given the opportunity. Twenty-two (22) individuals testified. Two (2) legislators and five (5) representatives from local government units spoke, all in support of the project. Six (6) representatives from local community groups spoke, three (3) were in support and three (3) opposed the project. Nine (9) individuals spoke, with four (4) speaking in support and five (5) opposing the project.

300. Written comments were also received by the PGCB by the November 8, 2010 deadline. One thousand five hundred fifty six (1,556) written comments were received with 1,251, or 80.4% being in support of the project. Two hundred ninety nine (299) written comments, or 19.2% opposed the project and six (6), or less than 1% were neutral.

301. On November 17, 2010, the Board held a Suitability Hearing for Woodlands, during which Woodlands made a presentation regarding its suitability for licensure as a Category 3 slot machine licensee. Additionally, WTA presented testimony in opposition to Woodlands' eligibility for licensure.

302. The following affiliates and principals of Woodlands consented to and have undergone required background investigations: 2001 Irrevocable Trust for Margaret H. Magerko; Nemaocolin Woodlands, Inc.; Joseph Hardy; Margaret Magerko; Peter Magerko; and Cheri Bomar.

303. No individuals associated with Woodlands have requested waivers of their obligation to be licensed.

304. Joseph Hardy must be licensed because he is the grantor of the 2001 Irrevocable Trust for Margaret H. Magerko. He founded 84 Lumber Company and the Nemaocolin Woodlands Resort. However, he is not involved in the day-to-day operations of Nemaocolin.

305. Margaret Magerko, President of Nemaocolin Woodlands, Inc., oversees the operations of Nemaocolin. She began her career at Nemaocolin as the first General Manager and was appointed President in 1992. She also serves as the President for 84 Lumber Company.

306. Peter Magerko is the Vice President of Nemaocolin Woodlands, Inc. and is also the Director of Construction for Nemaocolin.

307. Cheri Bomar is the Corporate Counsel and Secretary for Nemaocolin Woodlands, Inc.

308. Woodlands has not made any specific promises or commitments to the local community as part of its application, but expects that various charitable work it has engaged in previously will continue in the future.

309. Neither Woodlands nor any person affiliated with Woodlands is a party to any ongoing civil proceeding seeking to overturn a decision or order of the Board.

310. Neither Woodlands nor any affiliate, intermediary or holding company thereof has ever applied for or been issued a Category 1 or Category 2 slot machine license in Pennsylvania.

311. Neither Woodlands nor its affiliates, intermediaries or holding companies hold any interest in a supplier or manufacturer license.

312. Neither Woodlands nor any person affiliated with Woodlands have served as a public official or executive level public official during the one year period prior to the filing of Woodlands' Category 3 application.

313. Woodlands has satisfied all local, state, and federal tax obligations.

314. Neither Woodlands nor any of its Principals has been convicted of a felony or gambling offense that would prohibit the Board from issuing a license.

315. BIE's investigation has not revealed any information that would indicate that Woodlands or any of its affiliates, owners, or principals is of unsuitable character.

316. The investigation of Woodlands and its principals has not revealed any information concerning bankruptcies, civil lawsuits or judgments, criminal convictions, past activities or business practices, business associates or dealings or any other information concerning the honesty, integrity, family, habits or reputation that would prohibit licensure of Woodlands or its principals.

317. The evidence indicates that Woodlands and its affiliates have favorable records of compliance with applicable federal, state and local discrimination, wage and hour, disability and occupational, environmental health and safety, and labor relations and employment laws, and favorable records in dealing with employees and their representatives.

318. Woodlands has a Diversity Plan in place which assures equality of opportunity in employment and contracting, diversity in groups providing goods and services to Woodlands, and a plan to recruit, train and update diversity in all employment classifications at its facility.

319. Woodlands submitted a Compulsive and Problem Gambling Plan with its application, but the Plan required amendment as it did not fully address all criteria. The Plan did express a good faith effort to comply with the Act's signage requirements. The status of this plan does not exclude a finding of eligibility at this time.

320. Woodlands has demonstrated compliance with Federal, State and local discrimination, wage and hour, disability, occupational, and environmental health and safety laws, as well as State and local labor relations and employment laws.

321. Using straight line measurements, Woodlands far exceeds the fifteen (15) mile distance from the two (2) closest licensed facilities, the Rivers Casino (56.52 miles) and the Meadows Racetrack and Casino (44.67 miles).

322. Woodlands' proposed project will provide potential for new jobs with quality living wages and for economic development in the surrounding area as the project will create at least 120 temporary construction jobs and 400 jobs at the casino. Two

hundred (200) ancillary jobs are expected to be created as a result of increased tourism at Nemaquin.

323. Woodlands is committed to hiring a significant number of new employees from the local employment market.

324. On April 6, 2010, Woodlands submitted a Local Impact Report prepared by McMillen Engineering, containing a traffic assessment. A full traffic study for the proposed casino was performed in December 2005, which was approved by PennDOT in March 2006. Amendments and updates were performed in November 2006 and January 2010. Woodlands proposes to add a left-turn lane from Route 40 in to the Main Driveway where the facility is proposed to be located. Woodlands will also add a traffic signal at this intersection.

325. The McMillen Engineering traffic assessment found that the planned addition of a left-turn lane and traffic signal would create safer transportation along Route 40 and will have a positive impact on the local community in terms of traffic flow.

326. The traffic assessment was again reviewed by McCormick Taylor engineer Al Frederico.

327. There were no findings in the McCormick Taylor report concerning Woodlands' traffic improvements and mitigation measures that would suggest that such measures did not sufficiently address the traffic issues which would result from the operation of Woodlands' facility.

328. As part of its application, Woodlands submitted a plan to monitor the gaming floor to ensure that only qualified guests would enter. The Gaming Access Plan was developed by Woodlands in conjunction with IOC. The floor plan for the gaming

floor indicates a single public entrance with an interior security screening station. When a person approaches the screening station, the individual must present documentation that he or she is qualified to enter the gaming floor. The documentation is anticipated to be a patron card that will be validated and given to the patron. Security personnel for the facility will be trained in identifying those patrons that are qualified based on the patron card.

329. Individuals that hold a valid membership are eligible to enter the gaming floor. Nemaquin currently offers at least four (4) seasonal or year-round memberships: the Links Golf Season Pass; the Mystic Rock Corporate Season Pass; the Shooting Academy Preferred Membership; and the Mystic Mountain Season Pass.

330. On December 6, 2010, Mason-Dixon submitted to the Board a Supplemental Letter and exhibits, advising the Board of certain facts pertaining to the financial suitability of IOC, the proposed gaming facility operator selected by Woodlands.

331. On December 7, 2010, the Director of the Board's Office of Hearings and Appeals informed Mason-Dixon that its letter would not be accepted by the Board as it was received after the November 29, 2010 deadline for filing in the underlying matter.

332. On December 8, 2010, Mason-Dixon filed with the Board a Petition to Reopen the Record Pursuant to 58 Pa.Code § 494a.6 to Respond to Material Facts that Arose After the Record Closed and After Post-Hearing Briefs Were Filed. Specifically, Mason-Dixon wished to reopen the record to introduce information it claimed was material to the Board's evaluation of IOC and that was not available before the November 29, 2010 filing deadline.

333. Mason-Dixon's subsequent Petition essentially requested that the Supplemental Letter be made a part of the record in the underlying matter. The Supplemental Letter addressed: an economic study prepared by the Missouri Economic Research and Information Center; the Missouri Gaming Control Commission's decision to award a license to IOC; and public statements made by IOC management during an Earnings Conference Call on December 2, 2010.

334. On January 6, 2011, the Board denied Mason-Dixon's Petition to Reopen the Record and declined to admit into the record the information contained in the Supplemental Letter.

335. The information contained in Mason-Dixon's letter, however, was referred to FIU/BIE for examination. FIU subsequently issued an updated report regarding the information submitted. This report was thereafter forwarded to the Board as an addendum to Woodlands' Suitability Report.

CONCLUSIONS OF LAW AND DISCUSSION

The intent of the Act encompasses many stated objectives. Several of those objectives are to positively assist the Commonwealth's horse racing industry, enhance live horse racing and breeding programs and improve the living and working conditions of personnel who work and reside in and around the stables and backsides of area racetracks. 4 Pa.C.S. §§ 1102(2) and (4). Other objectives are to stimulate employment opportunities in the Commonwealth, provide a significant source of *new* revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development and employment opportunities, and, perhaps most pertinent to Category 3

licensees, to enhance the further development of the tourism market throughout the Commonwealth. 4 Pa.C.S. §§1102(2), (3), (5) and (6).

In addition, the General Assembly specifically indicated its intent and goal that the Board promote and ensure diversity in all aspects of the gaming activities authorized under the Act. 4 Pa.C.S. §1212(a). The Board also believes this to be an important goal to be implemented and encouraged in the gaming industry for the benefit of all citizens and fully intends to assure that diversity of representation is enhanced in accordance with the Act. Accordingly, the Board also looks to the factors of the representation of diverse groups in the ownership, participation and operation of an applicant for a license as provided for in Sections 1212, 1325(b) and 1325(c)(3) of the Act when evaluating the applicant for licensure.

As discussed *supra*, Section 1305 of the Act provides the specific eligibility criteria for all applicants, including that the applicant seeks to locate a Category 3 licensed facility in a well-established resort hotel with substantial year-round recreational guest amenities with no fewer than two hundred seventy-five (275) guest rooms under common ownership. 4 Pa.C.S. §1305(a)(1). The applicant for a Category 3 license must be the owner or the wholly owned subsidiary of the owner of the established resort hotel. *Id.* A Category 3 license may only be granted upon the express condition that an individual may not enter the gaming area of the licensed facility if the individual is not a registered overnight guest of the established resort hotel; a patron of one or more of the facility's amenities; or the holder of a Board-approved membership allowing the individual access to one of the hotel's amenities. 4 Pa.C.S. §1305(a)(1). The Act also

imposes location criteria, providing that no Category 3 licensed facility shall be located within fifteen (15) linear miles of another licensed facility. 4 Pa.C.S. §1305(b)(1).

Per the Board's regulations, to qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer a complement of amenities characteristic of a well-established resort hotel, including but not limited to the following:

- (1) Sports and recreational activities and facilities such as a golf course or golf driving range;
- (2) Tennis courts;
- (3) Swimming pools or a water park;
- (4) A health spa;
- (5) Meeting and banquet facilities;
- (6) Entertainment facilities;
- (7) Restaurant facilities;
- (8) Downhill or cross-country skiing facilities;
- (9) Bowling lanes; and
- (10) Movie theaters. 58 Pa.Code § 441a.23.

Section 1325 of the Act also provides that the PGCB may consider factors including:

- the location and quality of the proposed facility, including, but not limited to, road and transit access, parking and centrality to market service area, Section 1325 (c)(1);
- the potential for new job creation and economic development which will result from granting a license to an applicant, Section 1325 (c)(2);

- the applicant's good faith plan to recruit, train and upgrade diversity in all employment classifications in the facility, Section 1325 (c)(3);
- the applicant's good faith plan for enhancing the representation of diverse groups in the operation of its facility through the ownership and operation of business enterprises associated with or utilized by its facility or through the provision of goods or services utilized by its facility and through the participation in the ownership of the applicant, Section 1325 (c)(4);
- the applicant's good-faith effort to assure that all persons are accorded equality of opportunity in employment and contracting by it and any contractors, subcontractors, assignees, lessees, agents, vendors and suppliers it may employ directly or indirectly, Section 1325 (c)(5);
- the history and success of the applicant in developing tourism facilities ancillary to gaming development if applicable to the applicant, Section 1325 (c)(6);
- the degree to which the applicant presents a plan for the project which will likely lead to the creation of quality, living-wage jobs and full-time permanent jobs for residents of this Commonwealth generally and for residents of the host political subdivision in particular, Section 1325 (c)(7);
- the record of the applicant and its developer in meeting commitments to local agencies, community-based organizations and employees in other locations, Section 1325 (c)(8);
- the degree to which potential adverse effects which might result from the project, including costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services, will be mitigated, Section 1325 (c)(9);
- the record of the applicant and its developer regarding compliance with Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; and State and local labor relations and employment laws, Section 1325 (c)(10); and
- the applicant's record in dealing with its employees and their representatives at other locations, Section 1325 (c)(11).

After reviewing the entire evidentiary record for each of the four (4) applicants, the Board has determined that Woodlands represents the best fit for Category 3 licensure. In reaching this conclusion, the Board has examined and weighed the various factors cited above as follows.

I. Eligibility

With respect to a Category 3 license, Section 1305 of the Act provides the pertinent eligibility criteria, including that:

(1) neither the applicant nor its affiliates, intermediaries, subsidiaries, or holding companies has applied for or been approved or issued a Category 1 or Category 2 slot machine license; and

(2) the applicant is seeking to locate a Category 3 licensed facility in a well-established resort hotel:

(i) having no fewer than 275 guest rooms;

(ii) under common ownership; and

(iii) having substantial year-round recreational guest amenities. 4 Pa.C.S. § 1305(a)(1).

Per the Board's regulations, to qualify as a well-established resort hotel with substantial year-round recreational guest amenities, the resort hotel must offer a complement of amenities characteristic of a well-established resort hotel, including but not limited to the following:

(1) Sports and recreational activities and facilities such as a golf course or golf driving range;

(2) Tennis courts;

(3) Swimming pools or a water park;

(4) A health spa;

(5) Meeting and banquet facilities;

- (6) Entertainment facilities;
- (7) Restaurant facilities;
- (8) Downhill or cross-country skiing facilities;
- (9) Bowling lanes; and
- (10) Movie theaters. 58 Pa.Code § 441a.23.

The applicant for a Category 3 license must further be the owner or be a wholly owned subsidiary of the owner of the well-established resort hotel. *Id.*

The PGCB's regulations provide that the term "guest rooms under common ownership" is defined as a room or group of rooms, including timeshare units, that are owned by a well-established resort hotel and that are available for rental." 58 Pa.Code § 441a.1. Furthermore, the term "amenities" is defined by the Act as "any ancillary activities, services or facilities in which a registered guest or the transient public, in return for non de minimis consideration as defined by board regulation, may participate at a well established resort hotel, including, but not limited to, sports and recreational activities and facilities such as a golf course or golf driving range, tennis courts or swimming pool; health spa; convention, meeting and banquet facilities; entertainment facilities; and restaurant facilities." 4 Pa.C.S. § 1305(e).

A Category 3 license may only be granted upon the express condition that an individual may enter a gaming area of the licensed facility only if the person is one of the following:

- (i) a registered overnight guest of the well-established resort hotel;
- (ii) a patron of one or more of the amenities provided by the well-established resort hotel;

(iii) an authorized employee of the slot machine licensee, an employee of a gaming service provider, an employee of the Board, or an employee of any regulatory, emergency response, or law enforcement agency while engaged in the performance of the employee's duties;

(iv) an individual holding a valid membership approved by the Board or a guest of such an individual. 4 Pa.C.S. § 1305(a)(1).

The Act further defines a “patron of the amenities” as “any individual who is a registered attendee of a convention, meeting or banquet event or a participant in a sport or recreational event or any other social, cultural or business event held at a resort hotel or who participates in one or more of the amenities provided to registered guests of the well-established resort hotel.” 4 Pa.C.S. § 1305(e). Lastly, the Act also imposes location criteria, providing that no Category 3 licensed facility shall be located within fifteen (15) linear miles of another licensed facility. 4 Pa.C.S. §1305(b)(1).

It is important to note that, during the Category 3 licensing process, WTA, in its objections to Woodlands’ proposed licensed facility, argued that Woodlands is not eligible for a Category 3 license because its gaming facility is not proposed to be located *in* a well-established resort hotel. Rather, the gaming facility would be located in a smaller, existing structure on the resort grounds, but an appreciable distance away from its resort hotel complex. WTA argues that this is in contravention of the eligibility requirements of the Act.¹¹

¹¹ See 4 Pa.C.S. § 1305(a).

WTA's argument is significant, as it would also be applicable to the licensed facilities proposed by Bushkill and Mason-Dixon, as their gaming facilities would not be located "in" their resort hotels either. However, it is the Board's conclusion that it is not necessary for the gaming facility to be attached to, physically connected to, or adjacent to the actual sleeping quarters of a well-established resort hotel. A proposed gaming facility is "in" a well-established resort hotel, for the purposes of the Act and the Board's regulations, if it is located on the grounds of the resort or within an existing facility that is used as part of the resort. Indeed, the definition of "hotel" in the Act states it is "a building or buildings in which members of the public, may, for a consideration obtain sleeping accommodations." 4 Pa.C.S. § 1102. Furthermore, with respect to Valley Forge's licensed facility, this Board has previously found that applicant acceptable for licensure notwithstanding the proposed casino itself will be located in the Convention Center portion of the resort property.

Indeed, a resort with substantial year-round guest amenities often must, by its very nature, be comprised of multiple buildings on the same property. It would therefore be inconsistent with the Act if the Board were to adopt an unduly restrictive interpretation of the term "in," like the one advanced by WTA, and require that a well-established resort hotel and casino be housed entirely in a single building. Subsequently, the Board believes that WTA's argument that a licensed facility must be physically located "in" a well-established resort hotel is unavailing.

A. Number of Guest Rooms

Bushkill

The Fernwood Hotel and Resort offers 212 traditional hotel rooms and 576 fully furnished villas. The property consists of the main hotel and The Villas at Tree Tops and Fairway, which form a 440-acre complex. The Villas at Tree Tops and Fairway, known as The Villas, are sold as both deeded and right to use time shares (i.e. timeshares that are deeded to the resort, not to private persons, and are available for rental). Certain villas contain two (2) separate units, providing a total villa room count of 694 and a total resort room count of 906. At no time will Bushkill make available for rental less than 275 rooms as traditional hotel rooms and Bushkill will keep at least sixty-three (63) right to use time shares available for rental continuously to fulfill the requirements of the Act.

At its Suitability Hearing, Bushkill CEO Andy Worthington further testified that Bushkill already has plans to construct 292 additional hotel rooms. Furthermore, Gina Bertucci, Bushkill's Vice President of Marketing, testified that Bushkill's current compliment of 906 hotel rooms can accommodate up to 4,500 guests at any given time.

Out of the four (4) applicants for Category 3 licensure, Bushkill has, by a large margin, the most hotel rooms available for rental to guests.

Mason-Dixon

The Eisenhower, Mason-Dixon's proposed Category 3 facility, currently offers 307 traditional hotel rooms available for rent to the public. There are also apartment properties located within the Eisenhower complex. However, those apartments are not counted toward the aforementioned 307 hotel rooms.

Penn Harris

Penn Harris' Park Inn property currently has 239 fixed hotel rooms (219 under the Park Inn brand and an additional 20 rooms that are independent from the Park Inn). The 219 rooms that are operated under the Park Inn flag are traditional hotel rooms and are currently available to the general public. The precise nature of the additional 20 rooms is unclear. These 20 rooms are in a separate building from the 219 Park Inn rooms. Before the Holliday Inn property became a Park Inn franchise, Penn Harris contended that the 20 rooms were available for rental but were not in the Holiday Inn reservation system. Penn Harris has not provided any additional information regarding how these rooms are made available for rent to the general public.

In addition to these rooms, Penn Harris also makes available 36 recreational vehicles ("RV") in an attempt to meet the Act's 275 guest room threshold requirement. Neither the Act nor Board regulations specifically define the term "guest room." Therefore, the Board is required to construe the word in accordance with its common and approved usage. 1 Pa. C.S.A. § 1921 *et. seq.* A "guest room" is commonly defined as a bedroom for a visitor in someone's home or in a hotel¹² or a room for the lodging of guests.¹³

Penn Harris has proposed that the 36 Luxury RVs will be themed such as Airstreams, "Lucy and Desi" rooms and "touring rock star rooms." It is unclear when, precisely, the RVs became available for rental by the general public. However, during the Penn Harris public input hearing on August 30, 2010, Penn Harris testified that some

¹² www.Macmillan Dictionary.com

¹³ www.Dictionary.com

RV units were currently booked for people attending a nearby car show. Twelve (12) of the 36 RVs have one television in them. The RVs are not currently connected to an electrical hookup, but rather, are self-contained and receive electricity from a generator.

Woodlands

Woodlands currently has five (5) lodging opportunities, totaling 322 guest rooms. The lodging consists of the Chateau Lafayette, the Lodge, Falling Rock, private townhouses, and private luxury homes. The Chateau Lafayette is modeled after the “classic hotels” of Europe and has 124 guest rooms. The Lodge is the original hotel at Nemaquin and was a private hunting lodge. After renovations, the Lodge now has 97 guest rooms modeled after classic English countryside inns. Falling Rock is the newest addition to the resort and consists of 42 rooms.¹⁴ The Nemaquin Woodlands townhouses consist of 54 units that are typically rented for groups or families. The townhouses feature either a one or two-bedroom unit.

B. Substantial Year-Round Recreation Guest Amenities

Based on the points discussed *infra*, the Board finds that the record before it indicates that all four (4) applicants operate facilities with substantial year-round guest amenities.

The Pennsylvania Supreme Court recently upheld the Board’s decision to grant Valley Forge a Category 3 slot machine license in the face of Greenwood Gaming and

¹⁴ According to its website, the Nemaquin Resort offers the rooms at Falling Rock to guests from May through November. Therefore, the rooms are not available year-round. While it is not clear whether year-round room availability is required, even if the 42 rooms were excluded from the room count for Woodlands, it would still offer 280 rooms based on the room counts provided in its application.

Entertainment, Inc.’s opposition based on, among other things, the contention that Valley Forge’s proposed licensed facility did not contain the types of amenities that were typical of a well-established resort hotel. In its decision, the Court stated:

“We cannot conclude that the Board committed legal error or acted arbitrarily in capricious disregard of the evidence simply because the applicant has historically marketed itself more as a “convention center” than as a “resort hotel.” That the Valley Forge Convention Center focused its self-promotion on its convention center attributes and did not market its resort amenities as heavily does not mean that the two aspects are mutually exclusive. They are not. Further, the long-standing existence of the Valley Forge Convention Center is not subject to question, and it cannot be gainsaid that Valley Forge Partners presented competent evidence that the Convention Center provides a complement of amenities characteristic of a resort hotel. Thus, the Board’s conclusion that the Valley Forge Convention Center is a well-established resort hotel is not arbitrary. Moreover, the record demonstrates that the Board did not capriciously disregard Greenwood’s evidence. Instead, the record shows that the Board appropriately weighed competing evidence and found in favor of the applicant. That the applicant’s marketplace branding strategy does not employ the word “resort” is not determinative of the legality or reasonableness of the Board’s decision to award it a Category 3 slot machine license, and we thus determine that Greenwood’s first issue does not merit relief.” *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Board*, J-81-2009 at 7.

Bushkill

Year-round recreational guest amenities at Fernwood include: a Winter Fun Center and snow-tubing park; horseback riding; an 18-hole, par 71 golf course; a 2,000-seat Event Center; a 10,000-square foot interactive play center featuring video games and a redemption center; two (2) gift shops; fitness center; sauna; eight (8) indoor and outdoor pools; canoeing and rafting; paddle/bumper boats; paintball; massage; miniature golf; tennis; and basketball. Accordingly, the Board finds that Bushkill clearly offers many amenities typical of a resort hotel that can be used on a year-round basis.

Mason-Dixon

Year-round recreational guest amenities at the Eisenhower complex include restaurants and lounges; an indoor tropical courtyard with a sky dome that houses an indoor swimming pool and Jacuzzi; an outdoor pool; a fitness center with dry saunas; a ballroom; tennis courts; 27,983 square feet of convention/conference space; soccer fields; 36-hole miniature golf course; 14-acre fishing lake with paddle boats and walking and running trails; batting cages; basketball and volley ball courts; go cart tracks; and an outdoor pavilion.

Penn Harris

Penn Harris' amenities include two (2) bars/restaurants; a fitness center; an indoor swimming pool; an outdoor swimming pool; meeting/event facilities; miniature golf course; five (5) lighted sand volleyball courts; picnic grove; horseshoe pits; badminton and croquet courts; and a multi-purpose event field. The Park Inn also features a 14,000 square foot entertainment complex with indoor and outdoor decks; tiki bars; restaurant; and a California fireplace.

Woodlands

Woodlands features numerous amenities that are offered on a year-round basis. These amenities include two (2) 18-hole golf courses with a golf academy; the Woodlands Spa that includes a heated, indoor pool, whirlpool tubs, steam room, dry saunas, full service salon and hydrotherapy tubs and a fitness center; numerous retail offerings at Heritage Court Shops located within the Chateau and Lodge building,

including a Women's Boutique, a Men's Store, Logo Shop, Gift Shop, Golf Pro Shop and Christmas Corner. Other stores located throughout Nemaocolin are Hardy & Hayes Jewelry, the Cigar Shoppe, the Sundry Shop, the Boutique in Woodlands Spa, the Pool Boutique and the Signature Shop in the Chateau.

There are multiple dining locations varying from fine dining to casual eating establishments and several lounges and bars, including a cigar bar. The flagship restaurant, Lautrec, offers traditional French cuisine and has been awarded AAA's 5 Diamond Award and Forbes Travel Guide's (formerly Mobil Travel Guide's) 5 Star Award. Aqueous, a AAA 4 Diamond Award recipient, features a modern steakhouse experience using regional ingredients and an eco-tourism experience. The Tavern, P.J.'s Ice Cream and Pizza Parlor, the Hungry Moose Café at the Sundial Lodge, Orville's Pub and Grill at the Shooting Academy, the Caddy Shack, the Gazebo and the Halfway House on Mystic Rock are all casual dining options for guests. The Lobby Lounge, Diamond Lil's Cigar Bar, the Wine Bar, Amber at Falling Rock and the Hitchin' Post Saloon are all lounge opportunities.

The size of the Nemaocolin Resort allows it to offer many outdoor amenities; including all terrain vehicle rentals, paintball, mountain biking, a climbing wall, a ropes course, zip line, archery, disc golf, miniature golf, volleyball, and tennis. There is also a Shooting Academy. Fly-fishing guides and instructors are available for guided trips on the streams or seminars. During the winter, skiing and snowboarding, snow tubing, cross-country skiing, snowshoeing and dog sledding are also available.

Woodlands also operates the Nemaocolin Woodlands Pet Resort and Spa, which features individually themed kennels, climate controlled accommodations, an indoor

training pool, full grooming services and retail offerings. There are also full veterinary services available, including surgery capabilities, x-ray, rehabilitation and underwater treadmill equipment.

The Nemaquin property also has multiple swimming pools, both indoor and outdoor, an equestrian center that features horseback riding and sleigh rides, museums, retail shops, an airstrip for private planes and 31,000 square feet of meeting and banquet facilities; including several meeting rooms and a lecture hall.

In addition, Woodlands offers cultural programs focusing on art, food and wine. Nemaquin houses an art collection valued at more than \$45 million which is on display in a museum on Nemaquin grounds. Moreover, Nemaquin has what Woodlands classifies as one of the largest wine cellars in the Commonwealth of Pennsylvania, holding more than 10,000 bottles.

C. Ownership

Section 1305 of the Act requires an applicant for a Category 3 slot machine license to be “the owner or be a wholly-owned subsidiary of the owner of the established resort hotel.” 4 Pa.C.S. § 1305(a)(1). As the Act does not define the term “owner,” the Board is required to construe the word in accordance with its common and approved usage. 1 Pa.C.S.A. § 1921 *et. seq.*

Although the precise meaning of “owner” in Pennsylvania law cannot readily be identified through case law or legal treaties, it is clear that any definition of “owner” in section 1305 would include an applicant who possesses legal title to a “well-established resort hotel.” The Board also defines the term “owner” in section 1305 to include an

“equitable owner,” as Pennsylvania courts have interpreted the “owner” in a statute to include an “equitable owner.”

The Pennsylvania Supreme Court affirmed the Board’s previous decision to issue a Category 3 slot machine license to Valley Forge Convention Center Partners, L.P. (“Valley Forge”) based on Valley Forge’s assertion of equitable ownership of the Valley Forge Convention Center property. *Greenwood Gaming and Entertainment, Inc. v. Pennsylvania Gaming Control Board*, J-81-2009 at 8-10. “Pennsylvania jurisprudence has long recognized that during the interval between the execution of a real estate sales agreement and the conveyance of title, the purchaser of the real estate is considered the equitable owner of the real estate.” *Id* at 8 [citing *Allerdice v. McCain*, 101 A.2d 385, 389 (Pa. 1953)]. Highlighting the firm, “drop dead” date for closure of the sale of the Valley Forge Convention Center; the substantial monetary penalty for failure to close; and the unconditional nature of the transaction, the Court found that Valley Forge had indeed established equitable ownership and, therefore, ownership for the purpose of the Act. *Id* at 9.

Bushkill

Bushkill is neither the title holder nor a wholly-owned subsidiary of the title holder of the well established resort hotel (and right-to-use timeshares counted as part thereof) at Fernwood. Rather, a subsidiary of Bushkill, HaRa Corp., is the title holder of the hotel and right-to-use timeshares to be counted as hotel rooms. Bushkill takes the position that it, as the 100% parent of HaRa Corp., is the equitable owner, if not the title

holder, of the hotel and right-to-use timeshares and, therefore, is a proper applicant. The Board agrees.

Mason-Dixon

On October 9, 2009, Mason-Dixon entered into an Option to Purchase Agreement with Timeless Towns of America, Inc.; Michael Investments, Inc.; and the Estate of Richard L. Michael, Sr. for the purchase of the Eisenhower Hotel and Conference Center, the Allstar Events Complex and the Devonshire Apartments, which make up the property on which the proposed Category 3 facility would be located. This agreement has subsequently been updated most recently on April 7, 2010.

Accordingly, an issue does arise as to whether Mason-Dixon is the owner of the established resort hotel, as title to the 150-acre parcel of land and the properties thereon currently lies not with Mason-Dixon, but with Timeless Towns of America, Inc., Michael Investments, Inc. and the Estate of Richard L. Michael, Sr. Mason-Dixon's claim to ownership is similar, in certain respects, to that brought before the Board in the Valley Forge licensing proceeding. Specifically, they seek to establish ownership, not through bare legal title, but by establishing equitable ownership through the Purchase Agreement and, therefore, through invocation of the legal theory of equitable conversion. Under Pennsylvania law, equitable conversion exists if there is an agreement in place between the buyer and seller which establishes (1) a valid offer by the buyer, and (2) unconditional acceptance by the seller. An agreement is unconditional if the occurrence of any event required to close is within the control of the parties. Simply stated, no condition to closure can be outside the control of the parties.

As discussed *supra*, in the Valley Forge case, wherein the Court found equitable ownership existed, the property at issue was titled to Valley Forge Colonial, LP (“VFC”). Valley Forge and VFC entered in an Agreement of Sale regarding the property prior to Valley Forge’s application for licensure. The Agreement of Sale contains a firm deadline by which settlement must occur and severe penalties should Valley Forge fail to purchase the property by the deadline.¹⁵

The Mason-Dixon Agreement provides, in relevant part:

“The option to purchase the Assets [the property] shall commence upon the execution of this Agreement and shall continue until 5:00 p.m. on the one hundred eightieth (180th) day following the execution of this Agreement (the “Initial Option Period”). If the Buyer fails to exercise the option in whole or in part in accordance with the terms hereof within the Option Period, then the option to purchase granted by this Agreement and the rights hereunder of the Buyer shall automatically and immediately terminate without notice. Buyer [MDR] agrees to pay to Seller [Title Holders] the sum of [REDACTED] (“Initial Option Payment”) for the period of October 9, 2009 through April 8, 2010 payable upon execution of this Agreement. Buyer may extend the option period for an additional six (6) months (“Initial Extension Period”) upon notice to Seller which Option Period shall end on October 8, 2010. Said notice must be delivered to the Seller not later than April 5, 2010. Buyer shall pay the additional option payment in the amount of [REDACTED] (“Initial Additional Option Payment”) for the second six-month option period. All Option Payments made hereunder are non-refundable but will be applied to the Purchase Price.”

The Agreement was later amended to also provide the following:

“Buyer may extend the option period for three (3) additional six (6) month periods (the first such period (10/9/10-4/8/11) being, the “Second Extension Period”, the second such period (4/9/11-10/8/11) being the “Third Extension Period” and the third such period (10/9/11-4/8/12) being, the “Fourth Extension Period”) upon notice to Seller. Said notice must be delivered to the Seller not later than two (2) days prior to the expiration of the prior Option Period.”

¹⁵ The Valley Forge case also involves a factual scenario relative to equitable ownership not present here. Specifically, majority ownership in both the buyer and seller is the same.

Perhaps even more important, however, the Agreement also establishes a “drop dead” closing date of May 8, 2012 and a termination fee imposed for any failure to close on the transaction between October 9, 2010 and May 8, 2012.

Mason-Dixon asserts that, by virtue of this Agreement, they, like Valley Forge, are equitable owners of the property and, therefore, satisfy the ownership requirements of the Act. While, in Mason-Dixon’s Agreement, the seller acknowledges that there are no conditions precedent (including conditions predicated upon issuance of a Category 3 license) to closing and that Mason-Dixon is the equitable owner of the property, the Agreement is not entirely congruent with the agreement in Valley Forge. Most notably, the Valley Forge agreement called for an absolute and certain penalty if Valley Forge did not close on the transaction. Mason-Dixon’s penalty provision, however, is a per diem charge.

With respect to ownership and, more specifically, equitable ownership established through an unconditional sales agreement, the distinguishing characteristic between Valley Forge and Mason-Dixon is the amount of the termination fee. As noted, assuming Mason-Dixon terminated this agreement on April 14, 2011, the amount of damages due from Mason-Dixon (on that date) under the Agreement, would be far less than the termination fee due under Valley Forge. However, it must be noted that the sales price in Valley Forge was far greater than that proposed in the Mason-Dixon application. As a result, notwithstanding the vastly reduced termination fee liability of Mason-Dixon, given the size of it relative to the purchase price, the Board, in accordance with the Pennsylvania Supreme Court’s holding in the Valley Forge decision, finds that Mason-

Dixon has established equitable ownership through its Purchase Agreement. Subsequently, Mason-Dixon has satisfied the ownership requirement of the Act.

Penn Harris

An issue also arises as to whether Penn Harris is the owner of the 20 independent rooms and 219 Park Inn rooms, as title to the property lies not with Penn Harris, but with Mechanicsburg GF. Penn Harris asserts that, by virtue of its Contribution Agreement, they, like Valley Forge, are equitable owners of the Park Inn property and, therefore, satisfy the ownership requirements of the Act.

As discussed *supra*, Mechanicsburg GF has entered into a Contribution Agreement with Penn Harris. Penn Harris' claim to ownership is similar, in certain respects, to that brought before the Board in the Valley Forge licensing proceeding. Specifically, they seek to establish ownership, not through bare legal title, but by establishing equitable ownership through the Contribution Agreement and, therefore, through invocation of the legal theory of "equitable conversion." Again, under Pennsylvania law, equitable conversion exists if there is an agreement in place between the buyer and seller which establishes (1) a valid offer by the buyer and (2) unconditional acceptance by the seller. An agreement is unconditional if the occurrence of any event required to close is within the control of the parties.

Penn Harris asserts its ownership through a Contribution Agreement between itself, Mechanicsburg GF, RKH Securities, Inc., HI Land Development, LLC, and KNM Associates, LP. Mechanicsburg GF has agreed to contribute the Park Inn including its

219 rooms, the 20 independent rooms and land to Penn Harris together with the contribution by the other “outparcel owners” of the two adjacent outparcels in exchange for Mechanicsburg GF receiving a 20% partnership interest in Penn Harris. Until late in the application process, Mechanicsburg GF’s and the outparcel owners’ obligations under the Contribution Agreement were triggered upon the award of a Category 3 license to Penn Harris by the Board.¹⁷

Significantly, in the First Amendment to Contribution Agreement, a “drop dead” closing date is specified as well as a liquidated damages penalty should the consummation of the Contribution Agreement not occur by the closing date. And while these two (2) provisions mirror those found in the matters of Valley Forge and Mason-Dixon’s applications, their somewhat late arrival, as well as contingencies in other of the transaction documents found in this application call into question whether equitable ownership has been established. However, because Penn Harris, in the Board’s discretion, is not the best suited facility for the available Category 3 license, the Board need not delve further into this issue.

Woodlands

Woodlands is a wholly-owned subsidiary of Nemaocolin Woodlands, Inc., which owns and operates Nemaocolin.

¹⁷ On November 1, 2010, Penn Harris submitted a First Amendment to Contribution Agreement which removed the issuance of a Category-3 license as a condition precedent to the Contribution Agreement. This late submission was made despite a letter from the Board’s Bureau of Licensing, dated July 1, 2010, in which all Category-3 applicants were notified that as of August 2, 2010 all Category 3 slot machine license applications had to be complete and applicants would not be allowed to supplement their applications without Board approval.

D. Distance from other Licensed Facilities and Other Eligibility Matters

Using straight line measurements from the Pennsylvania state plan coordinate system, all four (4) applicants exceed the fifteen (15) mile distance requirement from all other facilities currently licensed by the Pennsylvania Gaming Control Board.

Bushkill's proposed licensed facility is located 15.58 linear miles from Mount Airy Casino & Resort (when measured from casino door to casino door); 43.08 linear miles from Mohegan Sun at Pocono Downs; and 36.7 miles away from Sands Casino Resort Bethlehem.

Mason-Dixon's proposed licensed facility is located 55 miles away from Hollywood Casino at Penn National Race Course.

Penn Harris' proposed licensed facility is located more than 25 miles away from Hollywood Casino at Penn National Race Course.

Lastly, Woodlands' proposed licensed facility is located 44.67 miles from WTA's licensed facility and 55.62 miles from Rivers Casino.

Furthermore, none of the applicants nor their affiliates, intermediaries, subsidiaries, or holding companies have applied for or been approved or issued a Category 1 or Category 2 slot machine license.

The record also indicates that all four (4) applicants filed a complete application for a Category 3 license as required; that they and their key employee/qualifiers have undergone the required background investigations by BIE; and that there is nothing in the application or background checks and investigations which would prohibit the granting of a Category 3 license to any applicant.

Lastly, the Board finds that all four (4) applicants have plans to limit access to their respective gaming floors to registered overnight guests of the well-established resort hotel; patrons of one (1) or more of the amenities provided by the well-established resort hotel; authorized employees of the slot machine licensee, employees of a gaming service provider, employees of the Board, or employees of any regulatory, emergency response, or law enforcement agency while engaged in the performance of the employee's duties; and individuals holding a valid membership approved by the Board or a guest of such an individuals.¹⁸

II. Suitability

A. Location

The Category 3 applicants present four (4) casino projects in four (4) diversified locations: 1) Bushkill, located in Middle Smithfield Township, Monroe County, in the eastern region of the Pocono Mountains; 2) Mason-Dixon, located in Cumberland Township, Adams County, two (2) miles north of the Maryland border; 3) Penn Harris, located in Hampden Township, Cumberland County, in the Harrisburg metropolitan area; and 4) Woodlands, in Wharton Township, Fayette County in Southwestern Pennsylvania. Each of the four (4) locations bring with it perceived advantages and disadvantages as testified to at length by numerous parties during the licensing hearings. The Board has considered the locations not as dispositive but as influential and as one of the many factors in its review of the projects, along with how that location may affect other criteria examined and considered.

¹⁸ A more definitive casino access plan will be the subject of a Petition submitted by the licensee before its licensed facility is permitted to open to the public.

Bushkill

Bushkill proposes operating a Category 3 facility at Fernwood in Monroe County, Pennsylvania, approximately 90 miles from New York City. Fernwood is located in the eastern region of the Pocono Mountains, a region that already contains three (3) licensed facilities. Bushkill is 15.58 linear miles from Mount Airy Casino & Resort; 43.08 linear miles from Mohegan Sun at Pocono Downs; and 36.7 linear miles from Sands Casino Resort.

Mason-Dixon

Mason-Dixon proposes operating a Category 3 facility at the Eisenhower located in Cumberland Township, Adams County, Pennsylvania. The nearest Board licensed gaming facility, Hollywood Casino at Penn National Race Course, is located 55 miles from the Eisenhower. Despite any testimony to the contrary, the Eisenhower does not abut Gettysburg National Park and Mason-Dixon has not expressed any plans or future intent to expand its facility any closer to the Park. The Eisenhower consists of a 150-acre parcel of land, two (2) miles north of the Maryland-Pennsylvania border.

Penn-Harris

Penn Harris' proposed Category 3 facility is located on a 22.5 acre site in Hampden Township, Cumberland County, Pennsylvania, approximately 6.8 miles from downtown Harrisburg, near the intersection of Route 581 and Carlisle Pike. Penn Harris' proposed licensed facility is located approximately 25 miles from Hollywood Casino at

Penn National Race Course. Penn Harris' location is the most "urban" setting of the four (4) applicants.

Woodlands

Woodlands' proposed Category 3 facility is planned to be located within the grounds of the Nemacolin Woodlands Resort ("Resort"). The Resort sits on nearly 2,000 acres of land in Wharton Township, Fayette County near the intersection of Route 40 and Route 381 close to the Maryland boarder. Woodlands' proposed licensed facility is located 44.67 miles from WTA's licensed facility and 56.52 miles from Rivers Casino.

In reviewing all of the sites, the Board finds Woodlands' location to be a dynamic and deserving location for a Category 3 slot machine facility. The Southwestern Pennsylvania location gives the Board a rare opportunity to expand gaming into a region of the Commonwealth that is, at present, underserved by the industry. Moreover, the location's proximity to both Maryland and West Virginia, as well as its large existing draw of out-of-state guests, make it an ideal candidate for licensure in that placement of a licensed facility at Nemacolin will likely draw patrons from outside of Pennsylvania, thus meeting one of the Act's primary stated purposes, i.e. enhancing the further development of the tourism market throughout this Commonwealth, including, but not limited to, year-round recreational and tourism locations. 4 Pa.C.S. § 1102(6). According to Woodlands, Nemacolin attracted visitors from 44 states and six (6) foreign countries last year.

The Board also finds that placing another licensed facility in the Pocono Mountain region may likely result in an unacceptable level of market saturation in an area

of the Commonwealth that is already well-served with gaming opportunities. Chief among the Board's concerns in granting Bushkill a license is the fact that Bushkill's proposed facility is located very close to three (3) existing casino properties. Furthermore, Mt. Airy Casino Resort, located just over 15 miles from Bushkill, produces, aggregately, the least amount of gross terminal revenue out of the 10 currently operating licensed facilities in the Commonwealth and, in turn, generates the least amount of tax revenue for the benefit of the citizens of Pennsylvania.

The Board believes that, if it were to grant Bushkill the available Category 3 slot machine license, gross terminal revenue at all Pocono Mountain region licensed facilities could be unacceptably impacted as the close proximity between facilities may lead to increased revenue cannibalization between competing casinos. Accordingly, the Board finds that there are more suitable locations presented by competing applicants when compared to Bushkill's location in an arguably saturated region of the Commonwealth.

With respect to Mason-Dixon, there is an obvious sensitivity among a percentage of the public due to the project's close proximity to the Gettysburg National Park, a treasured and historic location in American History. However, as repeatedly demonstrated by Mason-Dixon, their proposed licensed facility would not abut the park and they have no plans to expand in a fashion that would extend their facility in the direction of the battlefield. Therefore, the Board does not conclude that placing a licensed facility in the location proposed by Mason-Dixon would have any ill effect on the park, nor would it denigrate its historical significance.

Notwithstanding the previous conclusion, according to the testimony of Mason-Dixon's own expert, Terry Madonna of Madonna Opinion Research, 38% of Adams

County residents are specifically opposed to the placement of a licensed facility at Mason-Dixon's proposed location. Terry Madonna's research was based on a scientific polling of a sample of Adams County residents. That result indicates to the Board that, while not a majority, an unacceptably large portion of local residents do not want a licensed facility to be operated in Adams County.

Penn Harris' suburban location near downtown Harrisburg, Pennsylvania presents its own unique challenges and is unlike the other competing applicants in that it is the most urban setting of all the proposed Category 3 licensed facilities. Penn Harris is situated at the intersection of a bustling retail corridor, Carlisle Pike, and a very busy highway, Route 581. Furthermore, the property also directly borders a sizeable residential neighborhood.

B. Traffic

Road and transit access is a factor that the Board may take into account when considering an applicant for licensure. 4 Pa.C.S. §1325(c)(1). While traffic has not been identified during the evidentiary hearings of these Category 3 applicants to be of a magnitude as that encountered in cities such as Pittsburgh and Philadelphia, traffic is still a legitimate concern of the Board in the somewhat less urban areas of the proposed Category 3 locations. This concern is premised upon the undeniable position that traffic congestion is detrimental to a proposed casino, as patrons may be deterred from patronizing a particular casino if access is difficult or results in substantial delays in arriving at the casino.

Given the economic benefits that casino gaming brings to the Commonwealth, it is in the Commonwealth's interest that the Board selects locations for casinos that are likely to succeed in attracting large numbers of patrons. Likewise, significant additional traffic congestion does not serve the public interest of those living in surrounding neighborhoods, nor does it benefit commuters who use the surrounding road network for daily non-gaming uses.

Bushkill

The traffic study submitted by Bushkill was reviewed by McCormick Taylor, which noted that the study was based upon older data that does not meet the Pennsylvania Department of Transportation's ("PENNDOT") newer standards for preparing such traffic studies. Regardless, Al Frederico of McCormick Taylor further stated that, considering the lower traffic volumes in the region, there would not be a significant impact on traffic if Bushkill were to be awarded a Category 3 license. Frederico concluded that modifications to the driveway of the Bushkill property may be necessary as the flow of patrons to the property increases.

Mason-Dixon

The traffic study submitted by Mason-Dixon was again reviewed by McCormick Taylor engineer Frederico, who noted that the study provided a solid, conservative evaluation based on methodology consistent with that used by other traffic engineers. Mason-Dixon has also stated that it is willing to contribute to improvements to Route 15

ramps as well as its own driveway in an attempt to mitigate any unacceptable increases in traffic that may occur as a result of operating a licensed facility at the Eisenhower.

Penn Harris

Federico also reviewed the traffic study submitted by Penn-Harris and testified that the existing traffic congestion surrounding the Penn-Harris site is the highest of the four (4) applicants for Category 3 licensure, as the Carlisle Pike is a busy retail corridor. If significant improvements to local roadways and the property itself are not made, Federico concluded that an unacceptable increase in traffic congestion would occur as a result of Penn-Harris' operation of a Category 3 licensed facility at its proposed location. Furthermore, Federico testified that he believed Penn-Harris' development schedule to be implausible given its estimates on the time necessary to obtain PENNDOT permits for improvements to its driveway.

Woodlands

Finally, Federico reviewed the traffic study submitted by Woodlands and testified that, given the low existing traffic volumes in the area of Woodlands' proposed licensed facility, it is unlikely that the facility would create significant increases in traffic on the surrounding roadways.

It would be disingenuous to say that traffic associated with any of the casinos will have no impact on the surrounding areas and the Board does not reach such a conclusion. However, while every project would increase traffic in the vicinity of the casinos as a

natural by-product of the patron-driven business, based upon all of the evidence, the Board concludes that no insurmountable traffic mitigation barriers have been identified which would preclude a site for consideration, although Penn Harris would clearly have the most obstacles to overcome.

C. Quality of the Facility

All four (4) proposals for Category 3 licensed facilities and related buildings represent diversified architectural designs, site plans, and individual aesthetics, all of which have their own unique nuances. Accordingly, the Board looks to the totality of each of the proposals in this section as reflective of the overall quality of the facilities.

Bushkill

Fernwood was established and opened in 1921. The resort is located approximately 90 miles west of New York City and 110 miles north of Philadelphia. The property consists of Fernwood Hotel and Resort and The Villas at Tree Tops and Fairway, which form a 440-acre complex with 212 traditional hotel rooms and 576 fully furnished one to four bedroom villas, which can be converted into 694 rooms.

Bushkill's hotel rooms and villas are occupied by a combination of transient and leisure guests, groups, and timeshare marketing guests (i.e. potential time share customers). Fernwood also serves as the registration office for The Villas timeshare owners and provides services to owners including restaurants, amenities, and live entertainment.

In 2006-2007, the exterior and interiors of the villas were upgraded. The public spaces in the hotel were renovated; wireless internet access in the hotel meeting rooms was established; a lobby and restaurants were added; the front of the hotel received a facelift; and furniture in many hotel rooms and villas was replaced. The total capital expenditure for these improvements was over \$2 million.

Bushkill proposes to convert its existing 24,000 square foot Event Center (concert/conference hall) into a casino facility. The Event Center is connected to the main hotel facility and is adjacent to the lobby area of the resort complex. The casino facility will consist of the gaming floor, a center bar, and a new restaurant and retail space. Specifically, Bushkill proposes expanding the Event Center to 50,000 square feet to house a slot floor area of 13,750 square feet with 500 slot machines, a table pit area of 2,240 square feet with 15 banked table games and a poker room of 2,063 square feet with 6 non-banked/poker tables for a total gaming area of 18,053 square feet. According to Bushkill, the pit area could be expanded to include up to 22 table games. Bushkill also plans on including a 114-seat restaurant, 15-seat bar, and back of house facilities. In order to accommodate the anticipated increase in demand at the resort from both overnight and day-trip visitors to the casino facility, Bushkill proposed to construct new surface parking for approximately 587 vehicles.

Bushkill states that the gaming facility could be operational in six (6) to 12 months.

Mason-Dixon

Mason-Dixon's proposed location for its Category 3 licensed facility is the Eisenhower Hotel and Conference Center, which includes the Allstar Events Complex and the Devonshire Apartments.

Mason-Dixon plans to upgrade and renovate the existing hotel and to develop a casino facility by converting the stand-alone Allstar Events Complex structure to house 600 slot machines and 50 table games, as well as a food court and lounge. Mason-Dixon asserts that it has selected a "rustic, yet elegant design" for its project with a ski lodge aesthetic. More specifically, Mason-Dixon explains that its gaming floor will be comprised of three major areas: 1) 22,500 square feet of slot machines; 2) a 5,000 square feet poker room accommodating 15 tables; and 3) a 7,500 square foot table game area accommodating 35 table games. A covered walkway will connect the proposed gaming facility to the main entrance of the hotel. Mason-Dixon adds that the facility will include a porte-cochere with valet service and a VIP entrance, a bus lobby, a lounge for guests' arrivals, a players club, a 175-seat dining village with several outlets, and a 20-seat dessert and coffee lounge.

Mason-Dixon details that the gaming area will include a center bar and an entertainment lounge overlooking the lake. Mason-Dixon estimates that the total public facility development area for gaming and hospitality is 46,000 square feet and the related support services required for the management and operations of the facility are an additional 26,000 square feet for a total project area of 72,000 square feet.

Penn-Harris

At the Park Inn, Penn Harris anticipates that it will operate 600 slot machines and 50 table games. The proposal calls for construction of a 30,000-40,000 square foot structure that will be incorporated into the existing hotel. The new structure will house an approximately 25,000 square foot gaming floor, a spa and additional dining offerings to those currently available in the hotel. Investment in the new structure, including fit-out, is estimated at \$20 million. Additionally, the existing hotel will be refurbished, upgraded, and re-themed to incorporate the casino. The total project development costs are \$75 million. Penn Harris projects that it could open its casino 9 to 12 months after the issuance of a Category 3 license.

Penn Harris is also proposing to develop an RV World which will accommodate 36 permanent and themed RVs and parking as well as room for an additional 15 patron-owned RVs that can be housed in the RV Park. Proposed RV World services include potable water, waste removal, fueling, site security, convenience shopping, rental facilities for entertainment needs, high amp electric hook-up, bathing and toilet facilities, high speed internet, and pet facilities.

Woodlands

As discussed in the Findings of Fact and discussion of its year-round recreation guest amenities, *supra*, Woodlands possesses a world-class resort and plans to develop a casino facility within an existing structure at Nemaocolin. The proposed casino will be located separate and away from the lodging offered at Nemaocolin. Woodlands plans to move forward with renovation plans for the Wildside facility and develop a permanent

facility that it anticipates will open to the public within nine (9) months of the award of a license. The Wildside facility, which was originally an outdoor store, has 48,000 square feet of space and is located on the eastern part of the property, next to Route 40. Currently, the Wildside facility features eight bowling lanes, an arcade and a bar. These amenities will be relocated to another building to allow space for the gaming facility.

When Joseph Hardy first purchased the land on which Nemaocolin sits out of bankruptcy in 1987, it consisted of 400 acres of land and had a forty-room hotel. Today, Nemaocolin covers nearly 2,000 acres of land and consists of multiple structures that hold the amenities addressed above.

The “quality of the facility” factor is hard to quantify in any objective formulation. As stated, each facility is unique and would employ diversified design techniques. In some respects, all of the projects are the same or similar in that a similar number of slot machines and table games will be housed within, parking areas will be incorporated, and restaurants and bars will serve patrons drinks and food.

However, in the matter presented, one (1) specific applicant stands head and shoulders above all others with respect to the features and benefits it makes available to guests. By virtually any subjective, objective, or other quantifiable measure, the quality of Woodlands’ facility far surpasses that of any other Category 3 applicant currently before the Board. In no single statutorily mandated category of accommodations required to meet the legal threshold of a well-established resort hotel is Woodlands bested by a competing applicant. A full listing of these accommodations and offerings, discussed *supra*, would be superfluous.

Furthermore, of particular concern to the Board is Penn Harris' plan to incorporate an RV park into the principle design of its licensed facility. While certainly a unique and potentially successful proposal, the Board believes that the RV park concept, in this case, was hastily conceived, possibly to meet the 275 room threshold mandated by the Act. Indeed, even if the Board accepts that the RVs are "hotel rooms" as contemplated by the Act, the facility only recently met the 275 room threshold by parking RVs on its property and is, arguably, not a *well-established* resort hotel.

D. Potential for New Job Creation and Economic Development

One of the objectives of the Act is to provide a significant new source of revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives. 4 Pa.C.S. §1102(3). The Act also provides that the Board may consider the potential for new job creation and economic development which result from granting a license to an applicant. 4 Pa.C.S. §1325(c)(2).

i. Revenue generation

Evidence produced during the hearing process demonstrated to the Board that, among the four (4) proposals, there exists a range of revenue generation estimates that could be realized by the applicants once the casinos were developed and operating at capacity. While the potential for revenue generation is of concern to the Board, it should be noted that, by virtue of the amount of slot machines (up to 600) and table games (up to 50) a Category 3 licensed facility is permitted to operate, it is clear that such facilities

cannot and will not generate the same amount of revenue as Category 1 and Category 2 facilities. Subsequently, while persuasive, the potential for revenue generation is not the foremost concern for the Board in its evaluation of the Category 3 applicants. Rather, in this area, the Board focused more on potential for the generation of *new* revenue.

According to Steve Snyder, Senior Vice President of Corporate Development at Penn National, Bushkill projects that, in a stabilized year of operation, it will achieve a win per position of \$513 and total yearly revenues of \$107 million. Out of the four (4) Category 3 applicants, this is, by a wide margin, the highest revenue estimate. However, at Bushkill's Suitability Hearing, Fred Kraus of Sands Bethworks (in opposing the Bushkill proposal) correctly testified that Mt. Airy, Bushkill's closest potential competitor, has a win per position of approximately \$163 per position, routinely the lowest in the Commonwealth. Moreover, in 2007, when Bushkill initially applied for a Category 3 license, its revenue projections, provided by Innovation Group, were a win per position of \$159.

Additionally, the Board believes that, given the number of facilities in close proximity to Bushkill, that Bushkill's income will come at the expense of its three (3) closest competitors to some discernable degree.

The three (3) remaining applicants have all projected revenue figures that are very close to one another and, in the Board's opinion, far more realistic than Bushkill's. At its Suitability Hearing, Peter Tyson of PKF Consulting estimates that, in a stabilized year of operation, Mason-Dixon will realize a win per position of approximately \$275, with total revenues of \$83 million per year. Andrew Klebanow of Gaming Market Advisors testified that Penn Harris projects a win per position of \$277 in a stabilized year

of operations, for a total of \$75.8 million.¹⁹ Lastly, at its Suitability Hearing, Dr. Anthony Mumphrey testified that, in a stabilized year, Woodlands will realize a win per position of \$244, with annual revenues of \$68.4 million.

Overall, the credible evidence presented to the Board demonstrates that the Category 3 locations are, obviously, not projected to generate revenues and returns on a scale similar to those which Category 1 and Category 2 applicants have produced. While this difference is explainable based on the number of slot machines and table games that a Category 3 licensee may operate, it is still a concern to the Board, which has to consider the objective of the Act to “provide a significant source of new revenue to the Commonwealth to support property tax relief, wage tax reduction, economic development opportunities and other similar initiatives.” 4 Pa.C.S. §1102(3).

The Board finds that in terms of revenue generation, Woodlands is likely to produce the most *new* revenue for the Commonwealth due to several factors. First, Nemaocolin, Woodlands’ proposed Category 3 facility, is located further away from any other currently licensed facility and is approximately 56 miles away from WTA, thus availing itself to a region of Pennsylvania that the Board believes is underserved by gaming interests. Next, Woodlands’ close proximity to both Maryland and West Virginia; its on-site air strip; and its existing large number of out-of-state guests, all but ensures its potential to generate revenue via out-of-state patrons. Even without a Category 3 license, Woodlands currently draws 350,000 visitors annually, with 100,000 of those visitors staying overnight. Because of the quality of the Nemaocolin property and

¹⁹ The Board also has concerns about Penn Harris “cannibalizing” revenue from nearby Hollywood Casino at Penn National Race Course, given Penn Harris’ location in the heart of the Harrisburg area.

the variety of amenities it offers, in 2010, Nemaquin attracted visitors from 44 different states and six (6) different countries.

In conclusion, the Board finds that credible evidence has been presented by Woodlands supporting the conclusion that it possesses the well-established resort hotel that is most likely to attract visitors from outside of Pennsylvania and least likely to cannibalize revenue from other licensees, thus maximizing new revenues for the Commonwealth.

ii. Creation of jobs

The Board finds credible evidence that each of the proposed projects would create new jobs and ancillary economic development. Intrinsicly, the extent of new jobs or economic development is directly related to the scope of the project and the boost experienced by the related year round recreational guest amenities provided. Whether the scope and use of those amenities are fully realized leading to the fulfillment of the projected job numbers is, to a degree, speculative and based upon the best estimates of each applicant.

Bushkill estimates that, if it were to be granted the available Category 3 slot machine license, it would create roughly 912 new direct and indirect permanent jobs, including 360 direct jobs, 552 indirect jobs, and 180 on-site construction jobs. Mason-Dixon estimates that it would add 375 full-time jobs to the current 100 already in place at the Eisenhower and that 550 construction jobs will also be needed if it were to receive the Category 3 license. Penn Harris asserts that its licensed facility would create

approximately 300 full-time-equivalent employee positions and 250 to 300 construction jobs.

Lastly Woodlands believes that the addition of a casino to Nemaquin will have a substantial positive impact on the local economy. Woodlands projects that the facility will lead to the creation of 400 jobs related directly to the casino and 200 non-casino jobs related to the existing well-established resort hotel. This amounts to a total of 600 additional jobs to an area that Woodlands notes has typically had a higher unemployment rate than the rest of the Commonwealth. In addition to the 600 permanent jobs that will be created, the expansion and renovation of the existing Wildside facility for the proposed facility will create 150 temporary construction jobs as well as additional indirect jobs in the local economy.

It is also noteworthy that each applicant represents that they are firmly committed to hiring a substantial percentage of their employees from the local employment markets. Based on the projects that the applicants are committed to complete, the Board does not find any credible evidence that there is an appreciable difference between the applicants in this regard.

iii. Economic development

The Board also finds that each of the proposals will bring ancillary economic development to their respective surrounding locales. Obviously, any of the applicants' projects would provide a significant economic boost to their respective labor markets, beginning with the construction phase and proceeding through the commencement of gaming operations. Likewise, each applicant provided substantial evidence that its

respective project would generate additional spin-off jobs based upon the need for additional restaurants in the communities as well as to provide goods and services to those employed by the construction and casino trades. Consequently, the Board finds that economic development, both at the casino sites and in the nearby communities, will be greatly enhanced by the grant of a license.

However, in the comparative setting to which these licenses are subject, the Board finds that the economic benefit of Woodlands' proposed licensed facility would be the greatest, primarily for two reasons. First, given its very rural location, Woodlands is situated in an area in which economic development would have the most drastic impact. Second, as Woodlands' existing well-established resort hotel provides, by a wide margin, the largest variety and quality of amenities, it stands to create the most jobs ancillary to gaming based on an increased demand for its amenities and the personnel required to meet that demand.

iv. Community and other commitments

Each applicant had the opportunity to make various commitments and promises to the communities in which their respective licensed facilities would be located. These commitments typically are promises to provide funding for various projects or services in the communities and are a factor that the Board may consider either in support of economic development, 4 Pa.C.S. §1325(c)(2), and to mitigate costs of meeting the increased demand for public health care, child care, public transportation, affordable housing and social services. 4 Pa.C.S. §1325(c)(9).

Bushkill has not made any community-related promises contingent upon the award of a Category 3 license. Rather, Bushkill avers that it has the full support of local governmental agencies, municipal authorities, and the local civil and charitable organizations. This support, according to Bushkill, is without the necessity of promises or commitments to these agencies contingent upon the award of the license. The overwhelming support for its project, according to Bushkill, can be seen from its Public Input Hearing. Additionally, the evidence presented clearly indicates that Bushkill has a long history of philanthropic endeavors and will continue such endeavors, with or without a Category 3 license. For that they are to be commended.

Contingent on its approval for a Category 3 slot machine operator license, Mason-Dixon has agreed to several promises and commitments with the local community, including an agreement entered into on April 5, 2010 with Cumberland Township for annual funding; establishment of a scholarship fund; traffic improvements; reimbursement for certain township professional fees related to the casino project and provisions for providing certain easements. Mason-Dixon also entered into an agreement on July 28, 2010 with Adams County to provide for annual funding and to make an annual donation to the Adams County Volunteer Emergency Services Association. In addition, Mason-Dixon has also established the Gettysburg Tours agreement, Mason-Dixon Pass Program and "Hire Adams First!" Program as discussed *supra*. This is in addition to the longstanding and commendable philanthropic involvement of the LeVan family, several members of which are principals in the project.

If Penn Harris were to be granted a Category 3 license, it has committed to establish a 501(c)(3) non-profit entity to which it will contribute an amount equal to 1%

of its annual pre-tax income. The proceeds are to be used solely for philanthropic purposes for the benefit of the residents of Hampden Township.

Woodlands has not made any specific promises or commitments as part of its application; however, like Bushkill and Mason-Dixon, it submitted documentation of numerous ongoing contributions to local non-profit organizations and volunteer work performed by Woodlands' employees. Woodlands indicates that it has engaged in charitable support of area non-profits and community organizations as a matter of course and anticipates these types of contributions would continue into the future.

The Board finds that any commitments to community organizations or other philanthropic causes are beneficial and to be commended. Each applicant has committed to different kinds of community support, either through past charitable works, which will presumably continue, or based on their proposed projects. While different from each other, no specific applicant is so significantly better than another so as to sway the Board to choose one applicant over another based on this criterion.

E. Diversity Plans

Each of the four (4) applicants has presented a good faith plan to recruit, train and upgrade diversity in all employment classifications. No evidence has been presented to suggest that any applicant does not have the required, good-faith diversity plan or that it has failed to support diversity in other business endeavors.

F.. History of Developing Tourism Facilities Ancillary To Gaming

Bushkill is a new entity to gaming which has not previously owned or operated facilities in the gaming industry, however, it does have a strong prior history of developing tourism facilities ancillary to gaming. Specifically, Bushkill has a long and very successful history of operating its own resort, Fernwood, which has maintained a strong and notable presence in the Pocono Mountain region for decades. Additionally, its proposed casino operator, PGV, is a wholly-owned subsidiary of Penn National Gaming, Inc., which operates numerous casino properties in many different jurisdictions, including many racino properties and properties with connected hotel facilities.

Mason-Dixon is a new entity which has not previously owned or operated facilities in the gaming industry; although some of its principals do have a history of developing both gaming facilities and tourism facilities ancillary to gaming. Additionally, Mason-Dixon also plans to utilize PGV as its casino operator to take advantage of its knowledge and proven track record of success in the gaming industry and developing tourism facilities ancillary to gaming.

Penn Harris is a new entity which has not previously owned or operated facilities in the gaming industry and it does not have any prior history of developing tourism facilities ancillary to gaming. However, many of its principals, including Ken Kochenour, Michael Sklar, and John Donnelly, have considerable gaming and hospitality industry experience and, by implication, knowledge of developing tourism connected therewith.

Woodlands is a new entity which has not previously owned or operated facilities in the gaming industry. However, its proposed casino operator, IOC, is a national operator of

numerous casino properties in many different jurisdictions, including many properties with connected hotel facilities and related amenities. Additionally, Nemaquin Woodlands, Inc., Woodlands' parent company, also owns and operates arguably the finest resort property in the Commonwealth of Pennsylvania which has become a national and international tourist destination.

G. Potential Adverse Effects

In any casino project, the Board recognizes the potential adverse effects of gaming on the local community in terms of gambling addictions. This is an issue, however, that will arise no matter who the licensee is or where the project is located and does not relieve the Board of its mandate to issue slot machine licenses and regulate them thereafter. Accordingly, the Board believes the most appropriate way to deal with this potential effect is through the strong enforcement of a robust compulsive and problem gambling plan after the award of a license. In this case, the Board finds that all applicants are committed to the same end as the Board in this regard.

Traffic concerns are also an issue that each project will have to address. While increases in traffic cannot be avoided, their impact can be mitigated through roadway and intersection modifications. The assurance of such modifications will be addressed through conditions of the license consistent with the input of the traffic and planning engineers who provided information to the Board during the licensing review and hearing process.

Finally, in terms of potential adverse effects, the Board would be remiss if it failed to note the nature and amount of public comment in support of, and in opposition

to, the proposed projects. The numbers of written comments received by the Board varied widely depending on location. The Board notes that the opposition groups and individuals can be divided into two categories: those who oppose specific projects for identifiable reasons and those who simply oppose gaming on moral grounds. The concerns of the former groups are taken into account by the Board with respect to the specific concerns raised. As to the second group, *i.e.* those who simply oppose gaming, it must be noted that the General Assembly has, through the enactment of the Pennsylvania Race Horse Development and Gaming Act, already established the policy in this Commonwealth that gaming establishments as outlined in the Act will be licensed. Included within this mandate is the current establishment of a facility in a well-established resort. The Board's duty is to award this license if it finds an eligible and suitable candidate under the criteria of the Act. The Board will not, and indeed cannot, countermand the intent and will of the General Assembly by refusing to issue a license based upon those who oppose the spirit of the validly enacted statute.

As to those members of the public who opposed specific projects for other specified reasons, the majority of reasons (with the exception of the Mason-Dixon project, whose opposition was based, in large part, on Gettysburg's historical significance) included the affects of traffic and crime. The Board cannot eliminate traffic and cannot avoid all impacts on crime rates. The Board finds, however, that those adverse effects can be minimized through roadway improvements and site selections which provide buffers from residential areas, while at the same time providing substantial benefits for the community in terms of jobs, infrastructure improvements and

infusions of monies to social needs. Additionally, all existing data on increases in crime relative to gaming in the Commonwealth have, to this point, been negligible.

In sum, the Board believes that, based upon its collective experience, the benefits to the public obtained through the gaming industry far offset and compensate for any negative effects.

H. Record of Applicant in Complying With Employment and Wage Laws

The Board has not been presented with any credible evidence demonstrating any significant difference among the applicants with respect to the applicants' records regarding compliance with Federal, State and local discrimination, wage and hour, disability and occupational and environmental health and safety laws; State and local labor relations and employment laws, or the applicants' records in dealing with its employees and their representatives at other locations. *See* 4 Pa.C.S. §1325(10)(11). There being no evidence of record sufficient to establish that any one applicant is appreciably superior in this regard, the Board does not find that any applicant will fulfill the requirements of these laws in any substantial or appreciably better manner than any other applicant. Accordingly, this factor for consideration, while examined by the Board, does not lead the Board to find that one applicant is more suitable for licensure than another.

CONCLUSION

As demonstrated, the decision to award the Category 3 license to a well-established resort hotel was based upon an analysis of a wide variety of factors and evidence presented in the evidentiary record. Virtually all applicants; interveners; contesters; and the public presented their positions in a thorough and professional manner. This meant that the Board was required to, and did, consider a multitude of factors related to the applicants and had to arrive at a decision in the exercise of its discretion as to which one (1) of the four (4) applicants should receive the license.

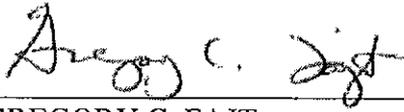
Upon reviewing all of the factors in the Act, a qualified majority of the Board finds that, in its opinion, Woodlands should be awarded a license because it possesses the finest well-established resort hotel out of all the applicants and is best positioned to benefit from the addition of a Category 3 licensed facility. Because the Board chooses and approves Woodlands as its first choice for a Category 3 license, the applications of Bushkill, Mason-Dixon, and Penn Harris must be denied, as only one (1) license is currently available.

Based upon the findings of fact, conclusions of law and discussions set forth above, which are supported by the evidentiary record, the PGCB finds that Woodlands has satisfied the requirements of 4 Pa.C.S. § 1305 for receipt of a Category 3 license, is eligible and suitable to receive a license, and that it is in the best interest of the public and the Commonwealth that this entity be granted the available Category 3 slot machine license allocated by the General Assembly to a well established resort hotel.

The grant and issuance of this Category 3 license does not give Woodlands a property right and the PGCB may, at its discretion, revoke or suspend its license if the

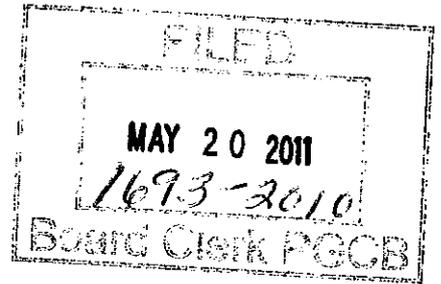
PGCB finds that Woodlands, their officers, employees, or agents have not complied with the conditions of the license, which BOL will establish; the provisions in the Act; or the PGCB's regulations.

BY AND ON BEHALF OF THE PENNSYLVANIA
GAMING CONTROL BOARD:

A handwritten signature in black ink, appearing to read "Gregory C. Fajt", is written over a horizontal line.

GREGORY C. FAJT
CHAIRMAN

COMMONWEALTH OF PENNSYLVANIA
GAMING CONTROL BOARD



IN RE: :
: :
APPLICATION BUSHKILL GROUP, INC : DOCKET NO. 19404
: :
APPLICATION OF MASON-DIXON : DOCKET NO. 46549
RESORT, L.P. : :
: :
APPLICATION OF PENN HARRIS : DOCKET NO. 46551
GAMING, L.P. : :
: :
APPLICATION OF WOODLANDS : DOCKET NO. 1366
FAYETTE, LLC : :
: :
Applications for Category 3 Slot Machine :
Licenses :

Reid
9:00 AM
AB

DISSENTING OPINION

Commissioner Kenneth I. Trujillo

DECIDED: April 14, 2011

While it is well within the Board's discretion, I respectfully disagree with the majority's decision to award the one (1) available Category 3 slot machine license to Woodlands Fayette, LLC ("Woodlands"). I write separately for the following reasons, as I believe Bushkill Group, Inc. ("Bushkill") to be the most desirable applicant before the Board for Category 3 licensure. Based on the record before the Board, I conclude that Bushkill presents the greatest possibility of financial success with the lowest risk.

As an initial matter, it is clear to me that the smaller population of Western Pennsylvania and the area surrounding Woodlands' proposed licensed facility is disadvantageous when compared to the exponentially larger population base in Eastern

Pennsylvania and Northern New Jersey that Bushkill would have been in a position to service had it been awarded the available Category 3 license. Bushkill's location in the Pocono Mountains is ideally situated to take advantage of the most densely populated areas of Pennsylvania, New Jersey, and New York. At its Suitability Hearing, Bushkill presented well-founded and uncontradicted evidence that, within 100 miles of the location of its well-established resort hotel, there are in excess of 28 million residents and two (2) major cities: New York City and Philadelphia. In stark contrast, the population within 100 miles of Woodlands' proposed licensed facility is estimated to be 4.5 million people. Given that there are three (3) casinos already operating in Western Pennsylvania; the possibility of another Category 1 casino license being issued in the region; and legalized gaming having been established in West Virginia and the advent of legalized gaming in Ohio and Maryland, the population from which Nemaquin will draw is six times less than Bushkill's potential customer base.

I am cognizant that the Pennsylvania Race Horse Development and Gaming Act ("Act") charges the Board with issuing slot machine licenses to further the development of the tourism market throughout the Commonwealth, including year-round recreational and tourism locations, among other reasons. While it is clear that Woodlands possesses a well-established resort hotel, it is obvious that much of any Category 3 licensed facility's patronage will be comprised of day-visits by persons living close to the casino itself. Subsequently, I believe that Bushkill is the most suitable applicant for a Category 3 slot machine license, as it would draw from the largest population base when compared to the other three (3) applicants.

Additionally, I believe the Woodlands proposal is substantially weaker than that of Bushkill, Inc. I am concerned about the financial picture of Isle of Capri Casinos, Inc. ("IOC"), Woodlands' proposed gaming facility operator vis-à-vis Penn National, Bushkill's proposed operator and financial partner. Woodlands presented testimony at its Suitability Hearing that IOC currently generates annual excess cash flows in the amount of \$60 million and has more than \$100 million available via a revolving credit facility, more than enough needed to finance the estimated \$50 million necessary to build the casino at Woodlands. However, after that hearing, IOC was granted a license by the Missouri Gaming Commission to build and operate a casino in Cape Girardeau, Missouri. The estimated cost of that facility is \$125 million. Subsequently, I have serious concerns regarding IOC's ability to finance the construction of two (2) facilities in different jurisdictions simultaneously. Furthermore, while IOC has \$100 million available via its existing credit facility, it currently owes \$275 million on that same note. In sum, I believe IOC's debt ratio to be very high, thus presenting a riskier project than does Bushkill.

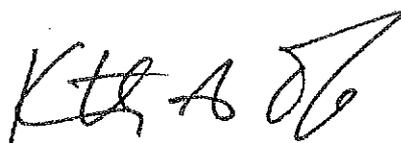
I believe Bushkill's present financial wherewithal to be substantially superior to that of Woodlands. Delvast Corporation ("Delvast"), a wholly owned subsidiary of Penn National Gaming, Inc. ("Penn National"), would provide project financing for Bushkill's licensed facility in the amount of \$55 million. Penn National's existing debt ratio is far lower than that of IOC and, subsequently, less precarious from a regulatory standpoint. When coupled with its existing track record of success in the Commonwealth of Pennsylvania and elsewhere, Penn National is, in my opinion, the preferred gaming facility operator and financier at this time.

I am particularly concerned that Woodlands has failed to earn a profit from the operation of its resort hotel in five (5) years and has seen increasingly larger annual deficits. While the quality of Nemaquin's physical plant is excellent, I have misgivings about awarding a Category 3 license to an applicant that has experienced prolonged and growing financial losses. I believe the General Assembly created the Category 3 slot machine license designation to bolster tourism at a select few successful well-established resorts. In my view, "well-established" contemplates profitable. Thus, I cannot in good conscience support the award of a Category 3 to a business which has been losing money in recent years. I believe such a licensing decision should, first and foremost, be based on the potential for tax revenue generation to benefit all Pennsylvanians and not serve primarily as a lifeline for a resort that is awash in red ink. While I sincerely hope I am wrong, my view is that Woodlands presents a substantially riskier venture than does Bushkill. The amenities of the Nemaquin Resort provides insufficient lipstick to make up for the financial shortcomings of the gaming project.

Finally, it is my opinion that the majority overstates the issue of revenue cannibalization and market saturation in the Pocono Mountain region. Competition and saturation are not synonymous. Indeed, basic economic principles and common sense suggest that the greatest number of licenses be concentrated near the greatest number of people. Furthermore, I might be more concerned with this issue if the Board were seeking to locate a Category 1 or Category 2 facility at Bushkill's proposed site due to the number of slot machines and table games that such facilities are permitted to operate. However, as it stands, a Category 3 licensed facility may only operate, at maximum capacity, 600 slot machines and 50 table games. While not insignificant, these figures

represent only a fraction of the 3,000 slot machines and 250 table games permitted at the much larger Category 1 and Category 2 licensed facilities. Consequently, the impact that a Category 3 facility may have on competition in the region must not be exaggerated. Given the fact that Category 3 facilities are required to restrict access to overnight guests, patrons of related amenities, and Board-approved membership holders, I believe their overall impact on competition is even less than their smaller scales would suggest. Moreover, the recent performance of the Eastern Pennsylvania casinos suggests strongly that there is still a substantial market from which to draw.

In conclusion, the Board has had the very positive dilemma of having multiple eligible and suitable applicants before it for licensure. Unfortunately, some otherwise qualified applicants must, by the very nature of these proceedings, be rejected as an operation of law. Given the forgoing reasons, I believe that Bushkill is the most suitable applicant and respectfully disagree with the majority's decision to award the available Category 3 slot machine license to Woodlands.



KENNETH I. TRUJILLO
COMMISSIONER